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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945 46

No. 519 30

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, AND ALMERINDO PORTFOLIO, TREASURER OF THE CITY OF NEW YORK, PETITIONERS,

vs.

JOHN T. CLARK & SON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED OCTOBER 17, 1945.

CERTIORARI GRANTED NOVEMBER 19, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 519

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, AND ALMERINDO PORTFOLIO, TREASURER OF THE CITY OF NEW YORK, PETITIONERS,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

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[fol. 1]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of the Application of JOHN T. CLARK & SON, Petitioner, for an Order Against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

STATEMENT UNDER RULE 234

This is a proceeding brought pursuant to Article 78 of the Civil Practice Act to obtain a refund of certain taxes, measured by petitioner's gross receipts paid by petitioner under protest to the City of New York, for the years 1938 to 1941, inclusive.

It was commenced on January 27, 1944 by the service of petition and notice of application on Joseph D. McGoldrick and Almerindo Portfolio, Comptroller and Treasurer, respectively, of the City of New York.

The respondents answered the petition on April 19, 1944.

There has been no change in the parties or attorneys herein.

[fol. 2] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK, SPECIAL TERM, PART I

Present—Hon. Aaron J. Levy, Justice.

In the Matter of the Application of JOHN T. CLARK & SON, Petitioner, for an Order Against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Pursuant to Article 78 of the Civil Practice Act

ORDER TRANSFERRING PROCEEDING TO APPELLATE DIVISION—May 3, 1944

The petitioner, John T. Clark & Son, having duly moved this Court for an order, among other things, transferring these proceedings for disposition to the Appellate Division

of the Supreme Court, First Judicial Department, and said motion having regularly come on to be heard,

[fol. 3] Now, upon reading and filing the notice of motion and the petition of John T. Clark & Son, verified the 27th day of January, 1944, together with proof of service of a copy of said papers upon respondents, submitted by petitioner in support of said motion, and upon reading and filing the answer to said petition, verified the 19th day of April, 1944, and the return, dated the 19th day of April, 1944, submitted by respondents in opposition thereto, and after hearing Baldwin, Todd & Lefferts, James F. Hogan, Esq., of counsel, attorneys for petitioner, in support of said motion, and Ignatius M. Wilkinson, Esq., Corporation Counsel, Samuel J. Warms, Esq., of counsel, attorney for respondents, consenting to the granting of said motion to the extent hereinaffer provided, and due deliberation having been had thereon,

Now, on motion of Baldwin, Todd & Lefferts, attorneys for petitioner, it is upon filing the opinion of the Court

Ordered, that said application be and the same hereby is granted to the extent of directing that the proceeding initiated by the petition of John T. Clark & Son, verified the 27th day of January, 1944, be transferred for disposition to a Term of the Appellate Division of the Supreme Court to be held in and for the First Judicial Department, and that all questions relating to a review of the determination of respondent Joseph D. McGoldrick, as Comptroller of the City of New York, and to the refund to petitioner of the sum of $4,942.37, be referred to said Appellate Division for disposition, and it is further

[fol. 4] Ordered, that a complete printed record of the proceedings before the respondent Joseph D. McGoldrick, as Comptroller of the City of New York, and of the proceedings upon this application be filed in said Appellate Division in accordance with its rules, in order that it may review the matters at issue herein in accordance with Section 1296 of the Civil Practice Act.

Enter,

A. J. L., J. S. C.

In Supreme Court of New York, County of New York

[Same Title]

Notice of Application

Please Take Notice that on the annexed petition of John T. Clark & Son, verified January 27th, 1944, the undersigned, pursuant to Article 78 of the Civil Practice Act, will move this Court at a Special Term, Part I thereof, to be held in and for the County of New York at the County Courthouse, Foley Square, New York, New York, on the 4th day of February, 1944, at 10 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard:

(1) For an order by this Court transmitting the complete record of this proceeding to the Appellate Division, First Department, for a review of the determination of respondent, Joseph D. McGoldrick, Comp-
[fol. 5] troller of the City of New York, referred to in the aforesaid petition, or

(2) in the alternative, for an order by this Court annulling or correcting said determination and directing the refund with interest of the sum of $4,942.37 paid under protest by petitioner to the City Collector of New York City and granting petitioner such other and further relief as may be just.

Please Take Further Notice that, pursuant to Section 1291 of the Civil Practice Act, you are required to serve at least two days prior to the return day of this motion a verified answer, annexing thereto a certified transcript of the record of proceedings subject to review or consideration and any and all affidavits or other written proof to be used herein.

Yours, etc., Baldwin, Todd & Lefferts, Attorneys for Petitioner, Office and Post Office Address, 120 Broadway, Borough of Manhattan, City of New York.

To: Joseph D. McGoldrick, Esq., Comptroller of the City of New York, Municipal Building, New York, New York. Almerindo Portfolio, Esq., Treasurer of the City of New York, Municipal Building, New York, New York.

[fol. 6] In Supreme Court of New York, County of New York

[Same Title]

Petition

To the Supreme Cout of the State of New York:

The petition of John T. Clark & Son respectfully shows to the Court and alleges:

1. At all times herein referred to, petitioner was, and is now, a corporation organized under the laws of the State of New York, with an office or place of business at 17 State Street, New York, New York, engaged in the general stevedoring business, as hereinafter described.

2. At all times herein referred to, respondent, Joseph D. McGoldrick, was, and is now, the Comptroller of the City of New York, and respondent, Almerindo Portfolio, was, and is now, the Treasurer of the City of New York.

3. Pursuant to Chapter 873 of the Laws of 1934, the Council of the City of New York adopted the following Local Laws:

Local Law No. 20 of 1938, effective June 30, 1938.
Local Law No. 103 of 1939, effective June 28, 1939.
Local Law No. 78 of 1940, effective June 29, 1940.
Local Law No. 47 of 1941, effective June 30, 1941.

4. Each of said Local Laws imposed a tax, measured by [fol. 7] gross receipts, for the privilege of carrying on or exercising for gain or profit within the City of New York any trade, business or commercial activity.

5. On or about June 16, 1941, petitioner filed with the Collector of the City of New York returns on its entire gross receipts for the calendar years 1938, 1939, and 1940, pursuant to the first three of said Local Laws, which purported to show due, and petitioner paid at the time of filing, the following amounts:

For 1938	
Tax due	$879.94
Interest June 15, 1939 to June 15, 1941	105.59
Total Tax and Interest	$985.53

For 1939

Tax due	$1,109.22
Interest June 15, 1939 to June 15, 1941	66.55
Total Tax and Interest	$1,175.77

For 1940

Tax due (no interest)	$1,434.48

Said returns were filed and said taxes and amounts of interest were paid under protest and duress and to avoid the imposition of penalties. Annexed to each of said returns was a letter which stated in detail the grounds of protest.

6. On or about June 11, 1942, petitioner filed with the Comptroller applications for the refund of said taxes and [fol. 8] interest. Said applications were rejected by the Comptroller by letter dated July 24, 1942, but the matter was set down for hearing.

7. On or about June 12, 1942, petitioner filed with the Collector of the City of New York a return on its entire gross receipts for the calendar year 1941, pursuant to the fourth of said Local Laws, which purported to show due, and petitioner paid at the time of filing, a tax of $1,346.59. Said return was filed and said tax was paid under protest and duress and to avoid the imposition of penalties. Annexed to said return was a letter which stated in detail the grounds of protest.

8. On or about November 27, 1942, petitioner filed with the Comptroller an application for the refund of said tax, and, in response, received a letter from the Comptroller, dated November 23, 1942, referring the matter for hearing.

9. Thereafter, at hearings held before a Presiding Officer representing the Comptroller on February 1, March 2, April 5 and June 8, 1943, petitioner adduced testimony and evidence and thereafter submitted a memorandum of law in support of the aforementioned applications. No testimony, evidence or memorandum was offered or submitted by the Comptroller.

10. By letter dated December 30, 1943, the Comptroller denied all four of said applications. There was no proof,

competent or otherwise, of facts to support said determination.

[fol. 9] 11. The general stevedoring business as carried on by petitioner during the calendar years 1938-1941, inclusive, may be briefly described as follows:

(a) Four basic operations were involved:

(1) loading steamships;

(2) unloading steamships;

(3) loading freight cars;

(4) unloading freight cars.

(b) The first two basic operations were carried out at piers located within and without the City of New York.

(c) The last two basic operations were carried out only at piers located within the City of Hoboken, New Jersey.

(d) In loading a steamship, petitioner would remove the hatches, prepare the holds, rig the hoisting gear and then transfer the freight from pier or lighter and stow it in the holds or on deck.

(e) In unloading a steamship, petitioner would reverse the process just described.

(f) In loading a freight car petitioner would transfer the freight from the pier and stow it in or on the car.

(g) In unloading a freight car, petitioner would reverse the process just described.

(h) The four basic operations constituted direct but intermediate links in the movement of freight from shipper to consignee.

[fol. 10] (i) During the performance of the four basic operations petitioner assumed responsibility for all damage to or loss of freight, injury to its own employees, and to third persons, and damage to the ship or freight car.

(j) The cost of the first two basic operations was usually included in the published tariffs of the steamship company. The cost of the last two basic operations was always included in the published tariff of the railroad company.

(k) Stevedores working in the Port of Greater New York and vicinity are subject to two distinct wage scales: one for coastwise shipping (from the Port of New York to another port within the United States or vice versa) and one for deep sea shipping (from the Port of New York to a foreign port or vice versa). The deep sea rate is higher than the coastwise rate. All wages paid by petitioner were paid at the deep sea rate.

(l) All freight loaded or unloaded by petitioner in New York City was en route to or from a foreign port, with the exception of one or two summer cargoes of beer for Miami, Florida. Most of the freight was loaded into or unloaded from ships sailing under foreign flags.

(m) All freight loaded or unloaded by petitioner on the New Jersey shore was likewise en route to or from a foreign port, except for cargoes carried by ships of Seatrain Lines, Inc., which sailed from Hoboken, [fol. 11] New Jersey, to New Orleans, Louisiana, and thence to Havana, Cuba, returning again to Hoboken via New Orleans. Most of the freight was loaded into or unloaded from ships sailing under foreign flags.

12. The refusal of the Comptroller to grant petitioner's applications for refund was unjust, erroneous and contrary to law for the following reasons, among others:

(1) The Enabling Act, Chapter 873, Laws of 1934, as amended, pursuant to which the Local Laws were enacted, did not authorize the City of New York to levy a tax upon the gross receipts received by the taxpayer for the services described in the foregoing paragraph.

(2) If the Enabling Act, as amended, purported to authorize the imposition of the tax, said law, and the Local Laws, pursuant to which the tax was levied and collected, are unconstitutional and invalid for the following reasons:

(a) Said laws are unconstitutional and in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

(b) Said laws are unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States.

(c) Said laws are unconstitutional and in violation of Article I, Section 10, Clause 2, of the Constitution of the United States.

[fol. 12] (3) Said laws are unconstitutional and invalid as an unlawful interference with the paramount power of Congress over navigation upon the navigable waters of the United States.

13. Heretofore and on the 27th day of January, 1944, petitioner filed with the Comptroller an undertaking in the sum of $500 executed by American Surety Company and approved by a Justice of the Supreme Court to the effect that, if this proceeding be dismissed or the determination confirmed, petitioner will pay all costs and charges which may accrue in its prosecution.

14. No previous application for the relief sought herein has been made.

Wherefore, petitioner prays (1) for an order by this Court transmitting the complete record of this proceeding to the Appellate Division, First Department, for a review of the determination of respondent, Joseph D. McGoldrick, Comptroller of the City of New York, referred to in the aforesaid petition, or (2) in the alternative, for an order by this Court annulling or correcting said determination and directing the refund with interest of the sum of $4,942.37 paid under protest by petitioner to the City Collector of New York City and granting petitioner such other and further relief as may be just.

John T. Clark & Son, by D. H. McKetrick.

(Verified by D. H. McKetrick, January 27, 1944.)

[fol. 13] In Supreme Court of New York, County of New York

(Same title)

Answer

The respondents, by Ignatius M. Wilkinson, Corporation Counsel of the City of New York, their attorney, for their

verified answer to the petition herein, upon information and belief, respectfully:

1. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraph of the petition numbered "5", but respectfully refer to the transcript of the record of the proceedings had before the Comptroller of the City of New York for the evidence produced by the petitioner relating to the said allegations of the petition, and for the legal effect thereof, except that they admit that the petitioner filed returns with the Collector of the City of New York, based upon its gross receipts or gross income for the years 1938, 1939 and 1940, and paid the aggregate amount of $3,525.68 on account of the taxes and interest due for the said years, under protest, and except that they deny that the said payment was made under duress.

2. Deny the allegations contained in the paragraph of the petition numbered "9," except that they admit that hearings were held before the Comptroller on February 1, March 2, April 5 and June 8, 1943, at which evidence was offered in connection with the petitioner's applications.

3. Deny the allegations contained in the paragraph of the petition numbered "10," except that they admit that on [fol. 14] December 30, 1943, the Comptroller gave to the petitioner notice of his determination denying the petitioner's applications for refunds.

4. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the petition numbered "1" and "11," but the respondents respectfully refer to the transcript of the record of the proceedings and of the testimony taken before the Comptroller for the evidence relating to the petitioner's manner of conducting its business, and for the legal effect thereof.

5. Deny the allegations contained in the paragraph of the petition numbered "12."

6. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraph of the petition numbered "7," except that they admit that the petitioner filed a return

based upon its gross receipts or gross income for the year 1941, with the Collector of the City of New York, and paid the sum of $1,346.59 as the tax appearing due thereon, under protest, and except that they deny that the said payment was made under duress, but respectfully refer to the transcript of the record of the proceedings had before the Comptroller of the City of New York for the evidence pertaining to the said allegations, and for the legal effect thereof.

[fol. 15] As and for a statement of the grounds upon which the Comptroller acted in making the determination complained of, the respondents further allege, on information and belief:

7. That between July 1, 1938 and June 30, 1942, the petitioner was engaged in and carried on within the City of New York, a business as defined in the local laws here in question, for gain and profit. By virtue of the fact that the petitioner was engaged in business as aforesaid in the City of New York, it became subject to the tax measured by its gross receipts or income, imposed by Local Laws Nos. 20 of 1938, 103 of 1939, 78 of 1940 and 47 of 1941.

8. That on or about June 14, 1941, the petitioner filed with the Collector of the City of New York its returns of excise tax measured by said gross receipts for the calendar years, 1938, 1939 and 1940, together with written notice of protest, dated of even date therewith, filed with the said returns, and paid the amount of taxes appearing due thereon, amounting in the aggregate, with penalties and/or interest to $3,595.68, and on or about June 12, 1942, the petitioner filed with the Collector of the City of New York its return of excise tax measured by gross receipts for the calendar year 1941, and paid the tax appearing due thereon, amounting to $1,346.59, under protest.

9. That said taxes, together with penalties and/or interest, were paid pursuant to Local Laws Nos. 20 of 1938, 103 of 1939, 78 of 1940 and 47 of 1941, for the annual [fol. 16] privilege periods embraced within the period from July 1, 1938 to June 30, 1942, and covered the annual calendar measuring periods comprised within the period from January 1, 1938 to December 31, 1941, inclusive.

10. That on or about June 11, 1942, the petitioner filed with the Comptroller of the City of New York its application for a refund of the said taxes applicable to the calendar years 1938, 1939 and 1940; and on or about November 7, 1942, the petitioner filed with the Comptroller of the City of New York, its application for refund of the taxes paid by it for the calendar year 1941, together with a demand for a hearing thereon.

11. That thereafter and on February 1, March 2, April 5 and June 8, 1943, hearings were duly held before the Comptroller of the City of New York on the said applications for refunds, pursuant to the provisions of the local laws in question.

12. That thereafter and on or about December 30, 1943, the Comptroller of the City of New York made a final determination denying the petitioner's applications for refunds of the said taxes.

13. That annexed hereto and made part of this answer is a duly certified transcript of the record of the proceedings had before the Comptroller, mentioned in the petition herein, and subject to review or consideration in this proceeding.

14. That the evidentiary facts upon which the determination of the respondent, the Comptroller of the City of New [fol. 17] York, was based, are set forth and contained in the certified transcript of the record of the proceedings, the minutes of the testimony taken at the hearings, the written documents introduced in evidence at the hearings and all the correspondence and other documents relating to and supporting the determination of the said respondent, the Comptroller of the City of New York. The said evidentiary facts show that there was competent proof of all the facts necessary to be proved in order to authorize the making of the determination by the said respondent.

15 That the determination of the respondent, the Comptroller of the City of New York, complained of by the petitioner in this proceeding, is in conformity with the law and the facts contained in the aforesaid record of the proceedings had before the Comptroller, annexed hereto and made a part hereof.

16. That this proceeding requires the determination of questions relating to the sufficiency and weight of evidence submitted to the Comptroller, within the purview of subdivisions 6 and 7 of Section 1296 of the Civil Practice Act, and hence, unless the petition is dismissed as a matter of law, this proceeding is a proper one to be transferred for disposition to a term of the Appellate Division, First Department.

Wherefore, the respondents pray for an order herein dismissing the petition, or if this be denied, then in the alternative, for an order directing that the instant proceeding be transferred for disposition to a term of the Appellate Division, First Department, and for a final order dismiss-[fol. 18] ing the proceeding on the merits, and for such other and further relief as to the court may seem just and proper, together with the costs of this proceeding.

Dated, April 18, 1944.

Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York 7, N. Y.

(Verified by Alvin McK. Sylvester, April 19, 1944.)

In Supreme Court of New York, County of New York

(Same title)

Return

To the Supreme Court of the State of New York:

Alvin McK. Sylvester does hereby certify that this is a transcript of the record of the proceedings herein, together with his decisions, determinations, and actions, and all and singular the evidence, documents, records, and all other papers before him which were submitted to him relative to or concerning his determinations denying the petitioner's application for refunds, pursuant to Local Laws Nos. 20 of 1938, 103 of 1939, 78 of 1940, and 47 of 1941:

[fol. 19] 1. Petitioner's sworn returns of business tax due, based upon its gross receipts or income for the calendar

years 1938, 1939, 1940 and 1941, pursuant to the local laws herein involved.

2. Letters of application from the petitioner to the respondent, Joseph D. McGoldrick, as Comptroller of the City of New York, dated June 11, 1942, enclosing cancelled checks in the sums of $1,434.38, $1,175.77 and $985.53, previously forwarded to the Collector of the City of New York in payment of the business taxes, together with penalties and/or interest, measured by the petitioner's gross receipts or gross income during the calendar years 1938, 1939 and 1940, respectively, and demanding a refund thereof, and a hearing.

3. A letter of application from the petitioner to the respondent, Joseph D. McGoldrick, as Comptroller of the City of New York, dated November 7, 1942, enclosing petitioner's cancelled check for $1,346.59 previously forwarded to the Collector of the City of New York in payment of the business tax measured by the petitioner's gross receipts or gross income during the calendar year 1941, and demanding a refund thereof, and a hearing.

4. Minutes of hearings held pursuant to said demand, on February 1, March 2, April 5, and June 8, 1943, together with all exhibits received in evidence or for identification at said hearings.

5. Notice, dated December 30, 1943, from the respondent, Joseph D. McGoldrick, as Comptroller of the City of New [fol. 20] York, advising petitioner of respondent's final determination denying the petitioner's applications for refunds of the said taxes.

6. Undertaking, dated January 26, 1944, executed by the American Surety Company of New York, and approved as to form and sufficiency by William C. Hecht, a Justice of the Supreme Court of the State of New York, *nunc pro tunc* as of January 26, 1944.

This return is based upon the records of the proceedings which appear on file in the office of the Comptroller of the City of New York.

In Witness Whereof, the Deputy Comptroller of the City of New York has hereunto set his hand this 19th day of April, 1944.

Alvin McK. Sylvester, Deputy and Acting Comptroller of the City of New York.

[fol. 21] FINAL DETERMINATION OF RESPONDENTS (REFERRED TO IN FOREGOING RETURN)

Joseph D. McGoldrick, Comptroller. George Marlin, Special Deputy Comptroller.

The City of New York

Office of the Comptroller

Bureau of Excise Taxes

350 Broadway, New York City 13

WAlker 5-9530

In Reply Refer To:
Refunds Unit
Room 610 RO
M-142992

December 30, 1943.

John T. Clark & Son, 17 State Street, New York, N. Y.

GENTLEMEN:

This is in further reference to your claim for refund as follows:

Year	Tax	Penalty	Total
1938	$879.94	$105.59	$985.53
1939	1109.22	66.55	1175.77
1940	1434.48	—	1434.48
1941	1346.59	—	1346.59
	$4770.23	$172.14	$4942.37

[fol. 22] You are advised that as the result of a formal hearing which was concluded on June 8, 1943, the Comptroller has determined that your claim for refund of Business Tax, as shown above, be denied.

This determination is final and irrevocable.

Very truly yours, George Marlin, Special Deputy Comptroller.

RO:JS.

OFFICE OF THE COMPTROLLER, BUREAU OF EXCISE TAXES

Room 511

February 1, 1943. 2 P. M.

(Same title)

MINUTES OF HEARING

Before Morris Saltzman, Esq., Presiding Officer

For the Comptroller:
Jay Cohen, Esq., Assistant Corporation Counsel.

For the Taxpayer:
Attorneys: Baldwin, Todd & Lefferts, 120 Broadway, New York City; by Samuel M. Lane, Esq., of Counsel; John H. Alexander, Esq., of Counsel; Bliss Agnes, Esq., of Counsel.

Mr. Saltzman: This is a hearing to review applications by [fol. 23] John T. Clark & Son, 17 State Street, New York, claiming refund of Business Tax and penalty in the total sum of $4,942.37, comprised of the sum of $879.94 tax and $105.59 penalty, a total of $985.53, pursuant to Local Law 20 of 1938; the sum of $1,109.22 tax and $66.55 penalty, a total of $1,175.77, pursuant to Local Law 103 of 1939; the sum of $1,434.48 tax, pursuant to Local Law Number 78 of 1940; and the sum of $1,346.59 tax, pursuant to Local Law Number 47 of 1941.

Do you wish to make an opening statement, Mr. Lane?

Mr. Lane: All right.

OPENING STATEMENT

The taxpayer, John T. Clark & Son has made claim for refund of taxes for the years 1938, 1939, 1940 and 1941 levied by the City of New York upon the gross receipts of its business. It is engaged in the general stevedoring business in the port of Greater New York which, for the purpose of this hearing, may be divided into three areas: The first area is the New Jersey shore, the second the New York shore within the City of New York—that is, within the five boroughs that comprise the City of New York—and the third the New York shore outside of the City of New York.

It is the contention of the taxpayer, first, that the tax upon its gross receipts is unconstitutional, no matter whether those receipts are derived from business in the first, second, or third area, and that the tax is unconstitutional as a levy on interstate and foreign commerce and for other reasons set forth in the claims for refund and the protest under which the taxes were paid.

The taxpayer contends, second, that so much of the gross receipts as are derived from services rendered on the New Jersey shore are not subject to the Gross Receipts Tax [fol. 24] in that they are derived from business outside of the jurisdiction of the City of New York.

In this opening statement I have described the port of Greater New York as divided into three areas, but as a matter of fact, all the taxpayer's services are rendered in the first two areas, that is, all of its services are rendered either on the New Jersey shore or on the New York shore or on the New York shore within the confines of the City of New York.

In the opinion of the taxpayer there is no distinction to be drawn between the facts in this case and the facts in Puget Sound Stevedoring Co. against Tax Commission of State of Washington, et al., 301 U. S. 90.

(Discussion off the record.)

Mr. Lane: I ask you to produce the Excise Tax return for the year 1938, showing the payment of $985.53 under protest.

I offer said return with the accompanying protest as Taxpayer's Exhibit 1 in evidence.

Mr. Cohen: I have no objections to the introduction of the return itself, provided it wouldn't be characterized, because the return itself, or the exhibit, would speak on its own behalf.

Mr. Lane: I have no objection to that.

I offer the typewritten statement only for the purpose of showing that a protest was filed with the return and not as proof of any of the statements contained in the protest itself.

Does that satisfy you?

(Discussion off the record.)

Mr. Saltzman: Your offer is, then, of the return for the year 1938, and the three typewritten pages attached thereto?

Mr. Lane: That is satisfactory.

[fol. 25] Mr. Saltzman (to stenographer): Mark the tax return for the year 1938 and three typewritten pages attached thereto bearing date June 14, 1941, Taxpayer's Exhibit 1 in evidence.

(Received and marked Taxpayer's Exhibit 1 in evidence.)

Mr. Lane: I call upon you to produce the claim for refund of the tax shown in Taxpayer's Exhibit Number 1.

(Discussion off the record.)

Mr. Lane: Let me, then, withdraw my former request and ask you to produce return of Excise Tax for the year 1939, filed by the taxpayer. I offer said return in evidence, together with a statement of three pages annexed to it, as Taxpayer's Exhibit Number 2.

Mr. Cohen: No objection.

Mr. Saltzman: Mark the Business Tax return for the year 1939, and the three typewritten pages dated June 14, 1941 attached thereto, Taxpayer's Exhibit 2 in evidence.

(Received and marked Taxpayer's Exhibit 2 in evidence.)

Mr. Lane: I ask you to produce Excise Tax return filed by John T. Clark & Son for the year 1940. Thank you. I offer said return, together with accompanying statement annexed to it, as Taxpayer's Exhibit 3 in evidence.

Mr. Cohen: No objection.

Mr. Saltzman: Mark the tax return for the year 1940, and the three typewritten pages dated June 14, 1940, Taxpayer's Exhibit 3 in evidence.

(Received and marked Taxpayer's Exhibit 3 in evidence.)

Mr. Lane: I ask for the production of the return of Excise Tax on gross receipts filed by John T. Clark & Son [fol. 26] for the year 1941. I offer said return, together with statement consisting of two pages annexed to it, Taxpayer's Exhibit 4.

Mr. Saltzman: Mark the return for the year 1941, together with the two typewritten pages dated June 12, 1942 attached thereto, Taxpayer's Exhibit Number 4 in evidence.

(Received and marked Taxpayer's Exhibit 4 in evidence.)

Mr. Lane: I ask you to produce a letter dated June 11, 1942 from Baldwin, Todd & Young to the Comptroller of the City of New York, together with applications for refund of Excise Tax for the years 1938, '39 and '40, and in each case the check with which the tax was paid.

They being produced, I offer said letter, said applications for refund, and said checks all together as one exhibit.

Mr. Saltzman: Mark the letter from Baldwin, Todd & Young to the Comptroller of the City of New York, dated June 11, 1942, a carbon copy of said letter, check in the sum of $1,434.48, check in the sum of $1,175.77, and check in the sum of $985.53, and three applications bearing date of execution June 11, 1942, Taxpayer's Exhibit Number 5 in evidence.

(Received and marked Taxpayer's Exhibit 5 in evidence.)

Mr. Lane: I ask you to produce the letter from Baldwin, Todd & Young to the Comptroller of the City of New York, dated November 7, 1942, together with application for refund of Excise Tax on gross receipts for the calendar year 1941, together with the cancelled check by which said tax was paid.

[fol. 27] I offer said letter, application for refund, check and also the envelope in which the foregoing were mailed, as one exhibit.

Mr. Saltzman: Mark the letter dated November 7, 1942 of Baldwin, Todd & Young, addressed to the Comptroller of the City of New York, application, check in the sum of $1,346.59, and mailing envelope attached thereto, Taxpayer's Exhibit 6 in evidence.

(Received and marked Taxpayer's Exhibit 6 in evidence.)

Mr. Lane: May the record indicate that the six exhibits just offered were produced from the Comptroller's files?

Mr. Saltzman: The record will so indicate.

Mr. Lane: Now I will call Mr. Clark as a witness.

GEORGE JOHN CLARK, residing at Contant Avenue, Haworth, New Jersey, called as a witness on behalf of the taxpayer, was duly sworn and testified as follows:

Direct examination.

By Mr. Lane:

Q. Mr. Clark, what is your full name?
A. George John Clark.
Q. And where do you live?
A. Contant Avenue, Haworth, New Jersey.
Q. What is your business?
A. Contracting stevedore.
Q. Are you associated with John T. Clark & Son?
A. I am.
Q. Is that a corporation, or a partnership, or what?
A. It's a corporation.
[fol. 28] Q. Are you an officer?
A. I am.
Q. What is your office?
A. Vice-president.
Q. How long have you been associated with John T. Clark & Son?
A. Approximately twenty years.
Q. Will you tell us, if you know, when John T. Clark & Son was incorporated?
A. I believe in 1910; I am not sure of that but I think it was 1910.
Q. What is the nature, in general, of the business of John T. Clark & Son?
A. It's a business of loading cargoes into ships and discharging cargoes from ships.
Q. Is it right to call that the general stevedoring business?
A. That's right.
Q. Is that a business which you have been engaged in all your adult life?
A. That's right.
Q. Your father and grandfather engaged in that before you?
A. That's right.
Q. Under the name of John T. Clark & Son?
A. That's right.

Mr. Cohen: Please don't lead the witness.

Mr. Lane: I won't lead when we get down to important business.

(Discussion off the record.)

Q. Mr. Clark, when you began in the stevedoring business, what was the first employment that you had in it?

A. I started as a timekeeper.

Q. And how long did you continue at that?

A. About a year and a half.

Q. And then what did you graduate to?

A. Well, you might say I graduated to be an assistant to my grandfather.

[fol. 29] Q. And in that capacity what duties did you perform?

A. Well, I didn't have any title, if that's what you mean.

Q. I am trying to find out for the record the basis of your familiarity with the business to show that you know the business, so that it will appear on the record, and therefore I'll ask you just to describe the duties which you have performed in the stevedoring business for the taxpayer.

A. Well, you might say that after being a time-keeper for approximately a year and a half, familiarizing myself with that end of the business, at that time my grandfather took me around personally, around the various piers' operations that we had, and taught me the business, and when he felt that I knew enough about it to have some responsibility he so gave me that responsibility, which was the overseeing of the work to see that the cargo was properly handled and properly stowed in the ship, and I would say that that amounted to something like three to four years before he felt sure of me. Does that answer your question?

Q. And since that time?

A. Since that time I have been in charge of the operations.

Q. And are in charge of the operation today?

A. That's right.

Q. And were you in charge of the operations during the years '38 to 1941, inclusive?

A. That's right.

Q. And you still are in charge of them today?

A. That's right.

Q. So that it would be fair to characterize you as an outside man rather than as an office man?

A. That's true.

Q. Will you describe what you characterized as the general stevedoring business as performed by John T. Clark [fol. 30] & Son—first, let us say, with respect to the areas in the port of New York where it is performed? Where do you operate?

A. The North River, as it's so known,——

Q. Is that part of Manhattan?

A. That's right; that's the Hudson River, but commonly known as the North River in our business; the East River; all of Brooklyn water front—any particular place that you might have a ship there—Staten Island; Bayonne; Claremont; Jersey City; Hoboken; Weehawken; and Edgewater, Jersey side.

Q. And have you now named the places in the so-called port of Greater New York where you operate?

A. That's right.

Q. Will you tell us now which of those places are within the limits of New York City?

A. The North River, East River, Brooklyn water front and Staten Island.

Q. And which of those other places are in the State of New Jersey?

A. Edgewater, Weehawken, Hoboken, Jersey City, Bayonne and Claremont.

Q. Will you describe for us the operations performed by John T. Clark & Son, in a general way, without respect to where the business is performed—that is, will you describe the actual operations of loading and unloading vessels, and loading and unloading freight cars, and any other work that you do?

A. Well, let's take loading first. Before a ship is loaded the usual procedure of a stevedoring corporation would be——

Q. Just let me interrupt a minute. This isn't to be the usual operation of any stevedoring company, but the usual operation of John T. Clark & Son.

A. I see. Well, put it this way: John T. Clark & Son is given a ship to load by whoever it may be. Either myself or my representative is in close touch with the representa- [fol. 31] tive of the steamship company, or any government agency that might have control of the ship. Then we get a list of cargo going forward on the ship, showing weights

and measurements of that particular cargo, and the type of cargo, because some cargoes can't be stowed with one another. Then we have what we call a plan which shows the various compartments of the ship.

Q. Who draws that plan?

A. That's a regular printed form showing the usual compartments in the usual ship. If we run up against something unusual our plan clerk, who makes the plan up, will make that up himself to show on the plan. We then develop the job by figuring out the weights and measurements of the various cargoes, as I said before. We have to know, of course, the capacity of the ship that we are going to put the cargo in—the cubic capacity; also go into conference usually with the captain to find out how his ship acts at sea—some ships of the same types and sizes act differently at sea; and we load it according to the way he wants his ship stowed—that is, as far as the distribution of weight in the decks or the hold, whichever the case may be. Once that's decided on and we know what we are going to do, our hiring foreman then hires the longshoremen. It's my job to place the various superintendents or head foremen and put them in charge of the work. The job is started, and through the flow of cargo coming in depends how fast the ship can be loaded. In other words, if a cargo doesn't get here today we can't work; we have to wait for the next day when the cargo arrives. Once the cargo has been placed aboard the ship in a satisfactory manner the ship is ready for sea, hatches [fol. 32] are battened down and the ship is put in what we call ship-shape condition ready to go to sea.

Q. Now, let me go back just a little way on that. Does the taxpayer contract with different shipping companies for servicing, loading and unloading their vessels?

A. That's right.

Q. When a vessel is due to arrive—let us say at Pier 48, North River—is the taxpayer notified in advance of the expected arrival of the vessel?

A. He is.

Q. Then is that the point at which you go over the ship's plan?

A. As near that time as possible. Sometimes it's a day or two before that can be developed because of a change of cargoes that takes place.

Q. When a ship arrives—let's say at Pier 48—do you assist her in berthing?

A. We do.

Q. That is, you have men who handle the lines?

A. That's right.

Q. And then after the ship is berthed, who takes off the hatches; who rigs the booms, and performs such labor?

A. We do.

Q. When you have the ship's booms rigged and the hatches off, is the hold then ready to receive the cargo?

A. Not necessarily; it may be in a dirty condition and has to be cleaned.

Q. Could it also be a ship in ballast?

A. Yes; it could be that.

Q. If it's in ballast, who removes the ballast?

A. We do.

Q. And what do you do with it?

A. Put it on barges, usually.

Q. How do you get it from the hold of the ship into the barges?

A. Various means. One is what we call the bucket method in which we use the ship's gear, and the other method is [fol. 33] to use diggers, as we call them—floating diggers which have grabs, and take the cargo out that way.

Q. What sort of cargo is that?

A. Could be brick, rubbish, sand or sulphur; could be most anything that could be carried in bulk capacity.

Q. Now we assume that the cargo hold is ready to receive the cargo; where do you get the cargo from that goes into that hold?

A. From the pier or from a lighter.

Q. Assuming that you get it from the pier, do you put it on the pier, or does somebody else put it on the pier?

A. No; we don't put it on the pier usually. Usually the work of placing the cargo on the pier—if it comes in by trucks, delivered to the pier by trucks, the truck driver takes it off and places it on the pier. If it comes in by lighter there's another company which has the contract with the railroads to discharge lighters; they have to take it off the lighters and put it on the pier and separate it so that we can take it in its right continuity to get it into the ship.

Q. Then how will you describe this place on the pier where the cargo is when you commence your operations?

A. I don't quite understand your question.

Mr. Cohen: Excuse me a minute.

(Discussion off the record.)

(Hearing adjourned to Tuesday, March 2nd, at 10 A. M.)

[fol. 34] OFFICE OF THE COMPTROLLER, BUREAU OF EXCISE TAXES

Room 516

March 2, 1943, 10 A. M.

GEORGE JOHN CLARK, residing at Contant Avenue, Haworth, New Jersey, recalled as a witness on behalf of the taxpayer, was examined and testified as follows:

Direct examination.

By Mr. Lane:

Q. Mr. Clark, on page twelve of the stenographer's minutes of the first hearing at the foot of that page the following sentence appears: "The job is started, and through the flow of cargo coming in depends how fast the ship can be loaded." Will you state whether that correctly represents what you said or whether you can state that more clearly?

A. Well, I think it should have been that if the cargo doesn't arrive—I don't know whether I said that further on or not, but if the cargo that we want to start, that we have laid out to start in the ship does not arrive at the time we want to start the job, necessarily we can't start that cargo until it does arrive. On arrival, on the flow as it comes in on the pier or afloat depends the speed with which we can load the ship.

Q. The speed with which you load the vessel depends upon the speed with which the cargo arrives on the pier to be loaded?

A. That's correct.

Mr. Cohen: Are you offering additional evidence in connection with previous evidence?

[fol. 35] Mr. Lane: Let me state that I think——

Mr. Cohen: Because he has already explained it in the next sentence.

Mr. Lane: I think not, Mr. Cohen. The sentence reads: "The job is started, and through the flow of cargo coming in—"

Mr. Cohen: How about the next sentence?

Mr. Lane: I was only addressing myself to a sentence which doesn't make sense and is incorrect, and I asked Mr. Clark to explain it and he explained it and that is as far as I wish to go. The sentence as it reads does not make sense. It is a typographic mistranscription, I suppose. I thought I would make the record plain.

(Discussion off the record.)

By Mr. Lane:

Q. Mr. Clark, on that same page twelve you spoke of a plan. I show you a paper and ask you whether that is such a plan as you referred to.

A. Yes, it is.

Mr. Lane: I wish to offer that in evidence and for the purpose I have prepared a photostatic copy which omits the name of the vessel, the pier at which she was loaded, the sailing date, and the destination, because this vessel was loaded with munitions and I don't suppose that we should reveal the name and the information.

Witness: I couldn't allow it to go in.

[fol. 36] By Mr. Cohen:

Q. Why don't you take a plan of some contract that covers the period in issue instead of something that's beyond the period in issue?

A. We can't get them.

By Mr. Lane:

Q. Is this in all respects similar to the plans which were used in the tax years in question?

A. Identical.

Q. Mr. Clark, can you not produce such a plan for the tax years in question?

A. Well, I'll try. I'll go back to some back records and see if there happens to be one buried in there. We never

did keep them. We never made a practice of keeping them after two or three months.

Q. Do you keep them now?

A. We keep them now because of the war.

Q. Are you obliged to keep them now?

A. Yes. The copy of this is in the possession of the steamship company that we work for.

Q. Well, looking at the paper what does it show?

Mr. Cohen: Well, before we get to the showing let's see whether we are going to offer it or what we are going to do with it.

I object to the introduction of this paper in evidence upon the ground that it covers a period beyond the taxable period in issue and upon the further ground that the testimony seems to indicate that the taxpayer did not retain any of these similar plans during the period in issue.

Mr. Lane: I will ask that it be marked for identification.

[fol. 37] Mr. Saltzman: The objection is sustained.

Mr. Lane: I ask that the copy of the paper which I offered in evidence be marked for identification with the concession of the Comptroller that it is a photostatic copy of that paper except for the omission of the name of the vessel, the pier where she was loaded, the date of sailing, and the ports of destination.

Mr. Saltzman (to stenographer): Mark the photostatic copy referred to as a plan Taxpayer's Exhibit Seven for Identification.

(Received and marked Taxpayer's Exhibit No. 7 for Identification.)

By Mr. Lane:

Q. Mr. Clark, during the tax years in question when a vessel was to be loaded did you in each case work from some sort of plan?

A. Yes, always.

Q. Is Taxpayer's Exhibit Seven for Identification such a plan?

A. It is.

Q. Did such plans—strike that out.

Q. How did that type of plan show the layout of the holds and the places where the cargo was to be stowed?

A. I don't think I quite understand the question.

Q. Well, in Taxpayer's Exhibit Seven for Identification which you say is typical of the plans——

A. That's right; that's true.

Q. —something is shown. Is it a vessel in profile or a vessel observed from above or——

A. Well, the plan itself is in profile. The writing on [fol. 38] the plan itself is to show looking down from the top deck to the lower hold. There is no other way it can be put on a flat piece of paper to show where the various commodities are stowed. I mean the drawing of the plan is in profile.

Q. That is profile, isn't it?

A. That's right. You are looking from the side of the ship down and this is the keel here (indicating). This is to show that when you take this deck off—the hatches off, this wording here——

Q. What wording?

A. Rubber tires, so many reels of machine wire, and so many tons of it will be the first thing that will be reached as these hatch covers are taken off the hatch.

Q. Now, you are pointing on the plan to it. What is this, the second deck?

A. That is the lower hold.

Q. The lower hold?

A. This is your deck.

Q. Now, when you turn to the top of the plan are you still looking at it from profile or are you looking at it vertically from the deck down?

A. Looking at it from the deck down.

Q. So that the plan combines both a profile elevation and a picture looking from the deck down towards the keel?

A. That's right.

Q. One picture is superimposed on the other?

A. That's right.

Q. Let me ask you again, does this plan, Plaintiff's Exhibit Seven for Identification, and by that I mean the outline of the plan and not any of the information with respect to the particular cargo shown on the exhibit, conform in all respects to the type of plan which you were using during the tax year?

A. It does.

Mr. Lane: Well, I renew my offer of it in evidence.

[fol. 39] Mr. Cohen: Same objections.

Mr. Lane: I also wish to point out that at this the second hearing in this matter we brought this plan pursuant to the suggestion of Mr. Cohen that we show exactly what steps were taken in loading a vessel and as the witness has said we could not bring the plan for the years in question and we therefore brought one which is identical with plans used for the years in question.

Mr. Cohen: It may have been my suggestion to offer testimony that was more specific and that fully described the various transactions involved in the taxable years rather than to dwell upon general statements and to offer plans for periods beyond the taxable years. I think in the period of taxable years you must have hundreds of these plans and it should be an easy thing to obtain some of these plans if you want to use them or offer them in evidence.

Mr. Lane: The witness said there were none.

Mr. Cohen: No, he said the steamship companies have these plans and if he were to inquire he might be able to get some.

Mr. Saltzman: The objection is sustained.

By Mr. Lane:

Q. Mr. Clark, do you know whether the steamship companies have copies of the plans for the loading of cargo which was performed by John T. Clark & Son during the [fol. 40] tax years in question?

A. I can only presume that they do have; actually, I can't say that they have or haven't.

(Discussion off the record.)

Q. Mr. Clark, at the first hearing on page thirteen of the minutes I asked you whether the taxpayer contracted with different shipping companies for servicing, loading, and unloading their vessels and you replied that they did, and I now show you a paper entitled Cunard White Star Line which begins: Memorandum of agreement entered into this 29th day of January, 1940 by and between John T. Clark & Son, Contractor, and Cunard White Star Steamship Company, Ltd., and ask you whether that is one of the contracts to which you referred—whether that is a copy of one of them.

A. Yes, this is.

Mr. Lane: I ask that it be marked for identification.

Mr. Saltzman (to stenographer): Mark this copy of documents entited Memorandum Agreement, dated January 29, 1940, between John T. Clark & Son and Cunard White Star Steamship Company, Ltd., Taxpayer's Exhibit Eight for Identification.

(Received and marked Taxpayer's Exhibit No. 8 for Identification.)

By Mr. Lane:

Q. Mr. Clark, I also show you a paper headed Memorandum of Agreement between Ellerman & Bucknall Steamship Company, Ltd., and John T. Clark & Son, which pur-[fol. 41] ports to have effect from the first day of January, 1940 and ask you whether that is another of such contracts?

A. It is.

Mr. Lane: I ask that a photostatic copy of that be marked for identification.

(Discussion off the record.)

Mr. Cohen: The paper that is offered for identification is a photostat of an agreement which is not signed by taxpayer nor the steamship company.

Mr. Saltzman: That's correct, isn't it, Mr. Lane?

Mr. Lane: That's correct.

Mr. Saltzman (to stenographer): Mark the photostatic copy consisting of five pages of an unsigned carbon copy entitled Memorandum of Agreement between Ellerman & Bucknall Steamship Company, Ltd., and John T. Clark & Son, Taxpayer's Exhibit Nine for Identification.

(Received and marked Taxpayer's Exhibit No. 9 for Identification.)

By Mr. Lane:

Q. Mr. Clark, can you produce signed copies of Plaintiff's Exhibits Eight and Nine for Identification?

A. Well, I should be able to produce them. I don't know why they weren't sent up here.

Q. Well, will you produce them, if you have them, at the next hearing?

A. I certainly will.

Q. Look at the form of Plaintiff's Exhibits Eight and Nine for Identification and tell us whether they are typical of the contracts under which you operated during the times that those contracts were in effect.

A. Yes, these are typical stevedoring contracts, nothing [fol. 42] unusual in them at all.

Q. Did you have such contracts during the tax years with a number of different steamship operating companies?

(Discussion off the record.)

A. Yes.

Q. Approximately how many different steamship companies did you have such contracts with during the years 1938, 1939, and 1940?

A. Perhaps a half a dozen.

Q. Will you name them?

A. I don't think my memory can serve me that well. I'll have to have it right in front of me so I'd know what I was talking about.

Q. Name some of them.

A. I wouldn't even like to do that without something before me.

Q. Taxpayer's Exhibit Eight for Identification relates to the Cunard White Star Line. Did the taxpayer do stevedoring under such a contract for the Cunard White Star Line during the years 1938, 1939, and 1940, and 1941?

A. Yes.

Q. Then, Taxpayer's Exhibit Nine for Identification relates to the Ellerman & Bucknall Steamship Company, and I ask you the same question with respect to that company.

A. Yes.

Q. Was that done also for the Ellerman Wilson Line?

A. That's true.

Q. Did you do work for the Ellerman Wilson under the same type of contract in 1938, 1939, 1940, and 1941?

A. We did.

Q. I show you what purports to be a copy of the contract with the Oriole Lines back in November, 1933 and ask you [fol. 43] whether you also did stevedoring for them in 1938 to 1940.

A. I can't remember whether we did any work for them in 1938.

Q. 1939?

A. I can't remember. It is too far back for me to remember.

Q. 1940 or 1941?

A. No, not 1940 or 1941.

Q. I show you a paper headed Moore & McCormack Company, Inc., February 13, 1937, and ask you whether that refreshes your recollection as to whether you did general stevedoring for them under such contracts in the tax years in question.

A. I think in 1938.

Q. I show you a paper headed Panama Railroad Company, dated March 29, 1937, and ask you whether you did general stevedoring for that company in the tax years under contracts of this type.

A. Yes, we did.

Q. Which years? In the tax years?

A. All the years.

Q. Did you do it in 1938?

A. Yes.

Q. 1939?

A. Yes.

Q. 1940?

A. Yes.

Q. 1941?

A. And 1941.

Q. I show you a paper headed The New York & Puerto Rico Steamship Company, Puerto Rico Line, Santo Domingo Line, dated February 14, 1941, and ask you whether you did general stevedoring for that company under such a contract in the year 1938?

A. No.

Q. 1939?

A. No.

Q. 1940?

A. No.

Q. 1941?

A. Yes.

Q. I show you a paper headed Chilean Nitrate Sales Corporation, dated April 22, 1941, and ask you whether you did
[fol. 44] general stevedoring for that company under such a contract in 1938.

(Discussion off the record.)

A. Yes, we did.

Q. In 1938?

A. I don't remember.

Q. In 1939?
A. I don't remember.
Q. In 1940?
A. I don't remember.
Q. 1941?
A. Yes.

Q. I show you a paper headed American Republics Line, dated November 3, 1938, and ask you whether you did general stevedoring for that company under such a contract in 1938?

A. No.
Q. In 1939?
A. No.
Q. In 1940?
A. No.
Q. 1941?
A. No.

Q. I show you a paper headed Agreement entered into this 15th day of November by and between Munargo Line Company and John T. Clark & Son, and ask you whether you did general stevedoring for that company in the year 1938.

A. I don't think so.
Q. In 1939?
A. I don't think so.
Q. 1940?
A. Yes.
Q. 1941?
A. Yes.

(Discussion off the record.)

Mr. Lane: I offer for identification paper headed Agreement, November 15, 1940, between Munargo Line Company and John T. Clark & Son.

Mr. Saltzman: Any objections, Mr. Cohen?

Mr. Cohen: That's offered merely for identification?

[fol. 45] Mr. Saltzman: Yes.

Mr. Cohen: Not for identification, no.

Mr. Saltzman (to stenographer): Mark this document consisting of four pages, entitled Agreement between Munargo Line Company and John T. Clark & Son, dated November 15, 1940, Taxpayer's Exhibit No. Ten for Identification.

(Received and marked Taxpayer's Exhibit No. 10 for Identification.)

By Mr. Lane:

Q. Mr. Clark, at the conclusion of the first hearing in this matter you were describing how taxpayer loads a vessel and you had told us that you first agreed upon a plan for the disposition of the cargo, then assisted in the berthing of the vessel, that then you rigged the booms and hoisting gear and removed the hatches, and you were about to tell us where you picked up the cargo to put in the holds and how you did it. So let's resume from that point and my first question will be: Where do you get the cargo? Where does it come into your hands? We were, if you remember, supposing that the operations were being carried on at Pier 48, North River.

A. Well, we would pick the freight up from the pier and put it in the ship from that point.

Q. Who puts it on the pier?

A. Well, the cargo comes by trucks, is put on the pier by truckmen themselves, and from that point we pick it up, make it up into drafts and take it into the ship.

Q. Let me interrupt you. When you say you make it up into drafts what do you mean by that?

A. Well, you've got to—no matter what commodity of [fol. 46] cargo it is, whether it is cases or barrels or whatever it is, you have to put it in some sort of sling or container and hoist it aboard the ship, and our men put it in such slings or containers so it can be hoisted into the ship.

Q. So that you will better understand how the question may be answered let me just point out to you that although I know perfectly well what a draft is, this record will be before judges sitting in the courts and they might not know what a draft is. It is a technical word; that is the reason for my questioning you on it. What is a draft?

A. Well, a draft is——

Q. It is a sling of cargo or a bundle of cargo?

A. It is a sling or a bundle.

Q. Or a group?

A. Or a group of cargo in one particular spot that we put into a container of some sort that we might call a rope

sling, wire sling, or an airplane, or a crate, or what have you, and it is from that point that we hoist it into the ship.

Q. Let's assume that the ship that you are loading is on the north side of Pier 48 and that she is to take on among other things iron pipes which are delivered by lighter. Where would you take—where would the taxpayer first take possession of that pipe?

A. Well, after the lighter—it would, of course, come by lighter—after the lighter is placed alongside the hatch that we are working——

Q. Who places it there?

A. The steamship company hires the boat to place it alongside the ship, invariably.

Q. You have a man that goes down on the lighter beside the ship?

A. No, that is always an employee of the steamship company, a wharfinger.

[fol. 47] Q. You mean there are men already on the lighters that bring the pipe and they stay there and attach slings to the pipe?

A. Oh, no, it is only one man aboard the lighter, that is the lighter captain. He is in charge of that boat. This—it may be delivered by some railroad and it may not be delivered right alongside the ship, it may be delivered on the end of the pier and they tie up at the end of the pier and the steamship company hires an outside towboat which goes around and makes fast to the lighter and brings it alongside the side of the ship; when it is secured to the ship, then our men go over the side down on the ladder and sling the pipe up and then we hoist it from there into the ship.

Q. And if the lighter were tied up alongside the south side of Pier 48—we are assuming your vessel is on the north side—and had some cargo other than pipe, could you take delivery on the south side of the pier and transport the cargo across the pier and so into the hold of the vessel.

Mr. Cohen: Are these supposings hypothetical questions or are these practical questions?

Mr. Lane: These are practical questions designed to induce Mr. Clark to describe in detail the various places on or about the pier where the taxpayer takes possession of the cargo.

I'll withdraw my question and try to ask it more simply.

By Mr. Lane:

Q. You have told us, Mr. Clark, that the taxpayer takes [fol. 48] possession of the cargo on the pier where it is deposited by truckmen and also that it takes possession of cargo on lighters alongside of the hold into which it is to be loaded. Is there any place else in or about the pier where the taxpayer takes possession of cargo?

A. Yes, on the pier that has two decks or an upper level there may be cargo on an upper level which would be the same as the lower level so far as our operations are concerned. We would take it from the upper level directly into the ship. Also you spoke something about a lighter, I'd like to bring that out, on the opposite side of the pier in which the ship is berthed. If we found it practical and it was a commodity of cargo that we thought was practical, we would take it from that lighter or open barge, make it up into slings, hoist it off the barge with our dock cranes, run it across the dock and right into the ship, but invariably when we don't handle the cargo alongside the ship directly from the barge into the ship the cargo on barges is taken off the barges and piled on the pier by another contracting concern who has contracted with the railroads to do such a job.

Q. In other words, so far as cargo received on lighters is concerned you will take it directly from the lighter into the ship but not from the lighter onto the pier. Somebody else does that.

A. No, somebody else does that. We only do that when it is practical for us to do it.

Q. Now, from the point at which you take possession of the cargo whether it is from the lighter alongside the hold or from the upper or lower deck of the pier is there any interruption in its flow from that point into the hold of the ship?

A. No, there is none.

Q. When it arrives in the hold of the ship who secures it [fol. 49] there?

A. The longshoremen that are working in the hold.

Q. Whose longshoremen are they?

A. Belonging to our company—employed by our company, I should say.

Q. That is, the taxpayer does it?

A. That's right.

Q. When cargo is not stowed in the hold but is stowed on deck, who secures it there?

A. Well, invariably the taxpayer secures that cargo.

Q. After the cargo is loaded into the holds and the deck cargo is loaded, does the taxpayer—is the taxpayer through or does it perform some other operation about the ship before the ship sides?

A. I might clarify that by saying that after the cargo is loaded in the ship——

Q. In the holds?

A. In the holds or decks of the ship—that's inside decks—to the complete satisfaction of the representative of the steamship company or the captain of the ship and the deck cargo is placed aboard the outside deck and secured and beams, hatches, booms, everything in shipshape condition, ready to go to sea, the only other job that the taxpayer has is letting go the lines of the ship so that it can go out on the river and proceed to sea.

Q. I thing you told us at the last hearing that the first thing the taxpayer does after the vessel is berthed is to rig the booms and remove the hatches and prepare the holds.

A. That's right.

Q. The last thing you do is just the reverse of that, is to unrig the booms, replace the hatches?

A. That's right.

Q. Now, with respect to various gear used to perform the operations that you have described, will you tell us what [fol. 50] part taxpayer furnishes and what part the steamship company furnishes?

A. Well, the steamship company furnishes all winches, all booms, falls for the cargo booms, rain tents for working in the rain, floats between ship and dock, all fenders, thing that covers the steamship's end of it pretty well.

Q. Night lights and——

A. Night lights; you work nights, of course that's supplied by the steamship company. Sometimes savealls are supplied by the steamship company; that's a net that stretches between the side of the ship and the dock so that if any cargo should fall out of a sling it saves it from going into the river. Invariably they are supplied by the steamship company. Sometimes they are supplied by the contractor. The contractor, or taxpayer in this instance, supplied all mechanical equipment, all wire slings or any special

sling that might be used for special cargo in which to transport the cargo from the place it rests on the pier to the side of the ship and from the side of the ship into the ship.

Q. That is, if a dock crane is necessary to get cargo from the pier to the ship the taxpayer furnishes it?

A. Well, you——

Q. You say to get the——

A. You and I might have a different idea of a dock crane. Any heavy lift over five ton, it is handled into the ship, if the ship's gears can't hoist that cargo then the steamship company supplies the heavy derrick in which to hoist the cargo into ship. What I meant by mechanical equipment are dock cranes, are the cranes that we own, that we sling the cargo up on the dock, as I have said before, and transport it to the side of the ship where it is hooked on to the ship and [fol. 51] then taken into the ship. It can be taken by a crane or a tractor or a hand-truck or some other mechanical means.

Q. And when I described mechanical equipment you meant dock cranes of that type and hand-trucks and tractors?

A. That's right. That's our obligation.

Q. Will you describe the way in which you operate by gang? You have told us about the gear and the equipment; now I want you to tell us about the division of the men into gangs to perform this work, under whose supervision they work.

A. Well, the men, the longshoremen themselves are under the direct supervision of the head foreman or superintendent, as the case may be, on the pier.

Q. Whose head foreman and whose superintendent is that?

A. Belonging to the taxpayer; working for the taxpayer. The men themselves are hired by taxpayer's hiring foreman who tells them what men to go in the hold, what men to go on the dock, and what men to go on the deck, such as winchmen and so forth.

Q. Let's assume that we have a ship that has been berthed at Pier 48 and you have agreed upon a plan, the cargo has arrived, and you are to start loading that vessel at eight o'clock tomorrow morning. Where do you get the men and how do you gather them together to begin that work?

A. Well, in this particular port men who work along the docks more or less are divided up into sections. Men following Pier 48 wouldn't follow any other pier or any other section. They work in that section. At night word is spread around that the ship will start tomorow morning. The men are there and the hiring foreman goes out and hires them.

[fol. 52] Q. What time of day is that?

A. Usually eight o'clock in the morning.

Q. Where does he appear to hire them? Outside the pier?

A. Outside the pier.

Q. Does he have a booth there or something?

A. No, he just goes out in the open and blows a whistle, the men stand in line, and he goes out and picks them individually.

Q. Well, then, after he's picked them, who is it, you say, that divides them into gangs and directs them to do the particular jobs?

A. Well, the hiring foreman designates what man is to work in what gang. He makes up the gangs. He designates what men are to work in the holds, what men are to work on the dock, and what men are to work on deck, and then his jurisdiction stops.

Q. Now, wait a second; how large is each gang?

A. Consisting ordinarily of twenty men to the gang.

Q. Is there a particular man in charge of each gang?

A. There is. He is called the hatch foreman.

Q. Who picks him?

A. The hatch foreman is picked by the head foreman.

Q. Well, is he selected in the same way that the nineteen men underneath him are, or do you have certain hatch foremen that are regular employees?

A. Most of all our hatch foremen are regular employees shifted from point to point, wherever they're needed.

Q. So that the hatch foremen are not among those who report at eight o'clock. They are regular employees and they are each given a gang of men?

A. That's right.

(Discussion off the record.)

[fol. 53] Q. You have told us, Mr. Clark, about the gangs and their selection and the foremen that have charge of the gangs. Are there other men employed in the operation

of loading the vessel who don't fall within these gangs that you have described?

A. Well, yes, there's our head foreman that I mentioned before. He has an assistant usually.

Q. What is his title?

A. Assistant foreman. They're steady payroll men, they are not hourly basis men at all. On most all the piers we have besides that what we call a superintendent who has full charge of all the operations on that pier, the head foreman taking orders from him, and the assistant foreman taking orders from the superintendent and the head foreman. The shipping foreman, as it is termed in the port of New York, comes under the jurisdiction of our superintendent and takes his orders from him as to how many gangs are to be hired and how many men to the gang. I might clarify that by saying that when I say the number of men to the gang I mean that the normal loading operation calls for twenty men in the gang. That's the union agreement, but we might find conditions either in the ship or due to a class of commodity that requires more men, so that's why I mentioned that the superintendent is the one who orders the number of men in the gang and the hiring foreman actually goes out and does the hiring of the men.

Q. What might it be in a gang?

A. It might be twenty-five, thirty, thirty-five men, depending on the particular job, as those are only isolated cases.

Q. When you speak of pier superintendent is that a job [fol. 54] that you yourself perform?

A. I didn't mean pier superintendent meaning that it had anything to do with the steamship company; we maintain a pier superintendent; the steamship company also maintains a pier superintendent, and between the pier superintendent and the captain or any other designated representative of the steamship company that we operate our business through——

Q. Wait a moment. The captain of the steamship to be loaded, there is the pier superintendent hired by the steamship company, and, then, there is taxpayer's pier superintendent?

A. That's right.

Q. Are those the three top men in this operation that you are describing?

A. They are.

Q. Well, now, let's go right down in the hierarchy from the captain of the ship down through the lowest foreman, which, I presume, is the hatch foreman, and you tell us what the function of each of those men is. First, the captain of the ship.

A. Well, the captain of the ship usually is more in an advisory capacity. In other words, the captain of the ship when he comes into port has got an awful lot to do. The pier superintendent working for the steamship company and the pier superintendent working for the taxpayer develop the loading of this particular ship. When they have it down to their satisfaction they then call in the captain to look it over, to see if he has any objections. If he hasn't any objections we go ahead according to that plan. The further functions of the pier superintendent working for the steamship company is to take full charge of all the clerical staff who receive the cargo for the steamship company or deliver it as [fol. 55] the case may be. The checkers that check the cargo, the watchmen that are on the pier to watch the cargo, and any other men working for the steamship company come under the jurisdiction of the pier superintendent working for the steamship company. The pier superintendent working for the taxpayer is the direct representative of the taxpayer's company. He has in charge—or rather, he is in charge of the operation which consists of a head foreman, assistant foreman, and a shaping foreman, and a time keeper; all gear and maintenance men on that particular pier come under his jurisdiction. The job of head foreman is to carry out the loading of the ship under the supervision of the superintendent for the taxpayer. The assistant foreman is there to simply assist the head foreman in any department that the head foreman wants him to assist him in. The hatch foreman is there to——

Q. Wait a second. You have got the head foreman and the assistant foreman, then you skipped over the shaping foreman.

A. I already explained what his duties are. Do you want me to explain it again?

Q. I think so.

A. The shaping foreman's duties are to maintain a good class of labor on that particular pier, to hire the men, to see that they reach the particular gang in which he's designated them to work in and also to see that they're

doing the job they're supposed to do. His job also is to keep law and order among the longshoremen. He is held responsible for the actions of the men that he hires. I think that fully describes the shaping foreman. Now, the hatch foreman. The hatch foreman is a foreman in charge [fol. 56] of the gang of men which may consist of twenty or more men. He receives his orders from the head foreman, what he is supposed to do. His job is to carry it out, to see that the men properly sling the cargo up, that it gets into proper compartments in the ship and it is properly stowed.

Q. Let me interrupt you a moment on that. We'll take a plan in the form of Taxpayer's Exhibit Seven for identification—withdraw that.

Q. What are typical instructions that are given to a hatch foreman by the head foreman?

A. Well, his——

Q. How does he know what to load and where to get it and when to load it?

A. The head foreman tells him where the cargo is, where he is to put it. His responsibility is to see that he's using proper gear to handle that particular cargo. If it's heavy cases down the hold it would have to be hauled into place. It is his job to see that he has the proper snatch blocks and proper extra wire falls and hooks and every description of gear to do that job. That is his responsibility; to know what he has to use and see that he has it on the job and see that he is using it.

Q. Does his responsibility begin at the foot of the ship's tackle, or let's say, on the upper deck of the pier, if that is where the cargo is?

A. You could take any particular point and say that is where his particular responsibility begins. He is responsible for the stowage after the cargo is received in the hold; he is responsible that his booms and winches are in good condition; he is responsible for the gear that the men are using in the hold; he is responsible for the actions of the men working under him; no matter what he is doing from start to finish.

[fol. 57] Q. You said he had something like twenty men in a gang under him. Do you mean that all twenty men are in the hold of a ship or may there be ten there and ten across the dock making up drafts?

A. No, the usual distribution of men is one which is controlled by agreement with the union, that eight men at all times shall be in the hold of the ship, the distribution of the other men is up to the stevedore.

Q. By that you mean up to the taxpayer?

A. That's right.

Q. Is it up to the hatch foreman where he puts the other twelve men in a gang?

A. No, that is up to the head foreman to tell how many men he wants on the dock or how many extra men he might want in the hold. The only stipulation is there must be eight men in the hold at all times.

Q. My only difficulty is this: you call this man a hatch foreman which, in my ignorant way of thinking about it, seems to indicate a man that's at the hatch, and I wonder whether he has any responsibility except to get the cargo off the dock and in through that hatch and stowed or whether he also has to direct the transporting of the cargo across the pier to the foot of the ship's tackle.

A. Well, perhaps it would be clearer if we called him a gang foreman; that might be clearer. He is the foreman in charge of that particular gang.

Q. But you call him a hatch foreman because that is the usage of the business?

A. The usual procedure in the port is to call him a hatch foreman.

(Discussion off the record.)

Q. Have you now sufficiently described the duties of the various foremen?

A. I have.

[fol. 58] Q. In addition to the foremen are there other men employed by the taxpayer who are not members of the gangs?

A. None outside of those that I have previously mentioned.

Q. Well, does a twenty-man gang, for instance, include men who operate winches?

A. Yes.

Q. Perhaps what you had better do is to take a twenty-man gang and treat that more or less as you have the foremen and describe the particular duties of the various men in the gang.

A. Well, let's start with the hold of the ship, what we call the hold-men. They only work in one place and that's in the ship's hold. There are eight men at all times there to do that work. Then, on the deck of the vessel we have three men, two men who operate the winches, one man, whose title is gangway-man, is in reality a signal man to signal to the winch-men when to go ahead or when to come back on the winches. Then we have two men called stringpiece men. Those men land the draft from the conveyance that brings it to the stringpiece. I might add that the stringpiece is between the shed of the pier and the ship. At that particular point, the stringpiece, when the cargo is delivered, the stringpiece-men hook on from the ship's hooks that particular draft of cargo, send it in the ship. The empty draft or sling is then put on the conveyance that brought the cargo to the stringpiece and goes back to the pile for another draft of cargo. The dock-men are those men who sling up the cargo in draft form to be loaded in the ship. I think I've covered it.

Q. I think that covers it—well, so far as the gang is concerned in loading or unloading. What about rigging or unrigging, do you have men that do that?

A. When you speak of rigging a ship, the usual proce- [fol. 59] dure there is the three men that I spoke of before that work on the deck, they're brought out usually at the start of the ship about an hour before the rest of the men are brought in. It is their job along with the hatch foreman to go down, hoist the booms, see that the winches are in working condition, placing the saveall net, and taking off the hatch covers and removing the beams—the hatch beams—from the ship before the rest of the men are brought onto the pier or onto the vessel, whichever the case may be, so that when the rest of the men are brought in the ship is ready then to go to work. That would be the only time that we could call anybody riggers; that's when they are actually doing rigging jobs.

Q. Well, do you have painters and carpenters and repair men?

A. We have a regular maintenance department which includes painters, carpenters, blacksmiths, welders, mechanical equipment mechanics.

Q. And they are in addition to the twenty in the gang?

A. Oh, yes, they work in our maintenance shop. They don't work on the piers.

By Mr. Cohen:

Q. Their job is to keep your equipment in good order?

A. That's right.

Q. They never get to the pier, do they?

A. Well, yes, they do get to the pier. In other words, if there is a tractor or crane breaks down on the pier they're sent there to repair that particular tractor or crane or if we damage a lighter the carpenters are sent there to fix the lighter up, things like that.

[fol. 60] Q. But their situs is where? Not at the pier, at the machine shop or some such place.

A. That's right.

By Mr. Lane:

Q. Is there any other operation in the loading of the vessel which we've omitted?

A. Well, of course, we've spoken entirely of general cargo up to now. There is such a thing as loading bulk cargoes into ships.

Q. Such as grain?

A. Such as grain, any particular type of ballast.

Q. Well, how do you load bulk cargoes?

A. Well, for instance, grain, of course, is loaded by the grain elevators when it is in a bulk condition, which has nothing to do with the taxpayer because the grain elevators come alongside and do that work themselves under the jurisdiction of the pier superintendent for the steamship company. Ballast invariably is loaded into the ship by what we call floating cranes for that purpose. When they are not available the bulk cargo is loaded in the ship by what we call the bucket method. Those buckets are put over the side in the canal-boat or whatever type of boat it happens to be. Our men shovel the bulk into the bucket and then the bucket is hoisted aboard by the ship's gear and then dumped into the ship and then, of course, we have men in the hold who trim this bulk cargo to keep it in a level condition and not allow it to pyramid.

Q. Well, those—that's quite a different operation, then, than this twenty-man gang?

A. Oh, yes.

[fol. 61] Q. Is that covered by a different union agreement?

A. Yes, it is.

Q. Let's talk a minute about the union agreements. What is it that regulates the working hours and wages and working conditions of the men hired by the taxpayer?

A. Well, it is an agreement entered into between the International Longshoremen's Association and the New York Shipping Association.

Q. I show you a pamphlet and ask you whether that is the agreement you referred to.

A. Yes, this covers the general cargo repairmen, checkers, cargo repairmen, clerks, and port watchmen.

Mr. Lane: I ask that that be marked for identification.

Mr. Saltzman (to stenographer): Mark this booklet entitled Agreements negotiated by the New York Shipping Association with the International Longshoremen's Association Taxpayer's Exhibit Eleven for Identification.

(Received and marked Taxpayer's Exhibit No. 11 for Identification.)

By Mr. Lane:

Q. Mr. Clark, is the taxpayer a member of the Contracting Stevedores of the Port of Greater New York and vicinity?

A. Yes. I might add for the record that they are members of the New York Shipping Association which makes that agreement.

Q. How do you arrive at the wages that you pay the men in the gang that you have described?

A. Well, it's one of those bargaining propositions. The [fol. 62] representative of the unions come in to the Shipping Association, ask for increases, the Shipping Association figures it out pro and con and finally arrive at some agreement that satisfies both parties.

Q. Do you take part in those discussions yourself?

A. Not me personally, no.

Q. Does the taxpayer?

A. Yes.

Q. Then after a satisfactory agreement has been arrived at between the union and the New York Shipping Association is it embodied in a pamphlet such as this, Taxpayer's Exhibit Eleven for Identification?

A. Yes.

Q. Is this such a pamphlet?
A. Yes, it is.

Mr. Lane: I offer it in evidence.

(Discussion off the record.)

Mr. Cohen: We'll take it for whatever it's worth.

Mr. Saltzman (to stenographer): Mark the booklet previously marked Taxpayer's Exhibit Eleven for Identification as Taxpayer's Exhibit No. Eleven in evidence.

(Received and marked Taxpayer's Exhibit No. 11 in evidence.)

By Mr. Lane:

Q. Mr. Clark, this Exhibit Eleven in evidence is a pamphlet effective January 1, 1940. Is this just one of a number of similar pamphlets that are published from time to time?
A. Yes.
Q. Has taxpayer been hiring its stevedores pursuant to the rates set forth in pamphlets of this kind all during the tax years in question, for 1938, 1939, 1940, and 1941?
A. Yes.

[fol. 63] Q. Will you tell us in general terms about the distinction, if any, between the rate of pay for longshoremen working on deep sea cargo and longshoremen working on coastwise cargo.

A. There always has been a differential of pay between longshoremen working on so called deep water ships and longshoremen working on coastwise ships. Differential as near as I can remember amounts to, I think, ten cents an hour. In other words, the men working for the coastwise steamship companies get ten cents an hour less than the men working on the deep water ships. Why that differential is there is something that I can't answer. It is one of those things that's been handed down year after year.
Q. Which rate do you pay your men?
A. On a deep water rate. We do no coastwise work.
Q. Let me ask you, then, as that brings up another point, about the destination of these vessels that you load. You say you do no coastwise work. What was the destination of the vessels that you loaded in 1938, 1939, 1940, and 1941?
A. All the vesels that we handled in those years that you speak of all went to foreign ports; therefore, they're classi-

fied as deep water ships, if you are referring to the rate of pay for the longshoremen.

Q. I think up to this point we have been—or, let me ask you, up to this point in giving your answers have you not been proceeding on the assumption that we were discussing the loading and unloading of the steamships in North River?

A. Yes.

Q. Let me ask you about the loading and unloading of steamships in Hoboken. In the first place, in Hoboken do you take possession of the cargo from trucks as you do in New York?

[fol. 64] Mr. Cohen: I object to the question. It is leading and calls for a conclusion.

Mr. Saltzman: Objection sustained.

By Mr. Lane:

Q. Mr. Clark, please tell us whether the taxpayer in the years 1938, 1939, 1940, and 1941 loaded anything except oceangoing vessels.

A. No.

Q. Did the taxpayer in those years receive cargo from carriers other than steamships, lighters, and automobile trucks?

A. Yes, in Hoboken we received cargo from railroad cars.

Q. Did you load any cargo into railroad cars?

A. Yes, we did.

Q. Well, now, that's the point I wish to make. Did you do that any place except Hoboken?

A. No.

Q. Will you describe what you did in connection with loading or unloading freight cars in Hoboken.

A. Well, in Hoboken there is a railroad known as the Hoboken Shore Road for which we are under contract to load and/or discharge cargoes from freight cars to the docks and from the docks onto the freight cars. That's the only location we have such a job. In Hoboken we can at various times discharge a ship and then load that cargo that we have discharged from the ship directly into the freight cars or vice versa, taking the cargo out of the freight cars and loading it directly into the ship.

Q. And do you in loading the freight cars perform on a smaller scale the same sort of functions that you perform in

loading a steamship; that is, do you break out the cargo and [fol. 65] do you lash the cargo and do you——

A. Well, of course, in discharging the freight car itself there isn't much to that. We open the doors of the car and if it's braced we have to break the bracing to get the cargo out, and by the same token in loading the cargo into the freight cars if it happens to be barrel stuff or something like that it is our duty to chock it off so it can't move in transit.

By Mr. Cohen:

Q. Where else does your company do work besides Hoboken and North River piers?

A. Brooklyn.

By Mr. Lane:

Q. Where else?

A. Staten Island.

By Mr. Cohen:

Q. East River?

A. No, we don't do anything in the East River. Claremont, Bayonne, Carteret, Sewaren.

By Mr. Lane:

Q. Is what you have told us about loading and unloading freight cars in Hoboken the only thing different from the testimony that you have given us with respect to loading and unloading ships in North River? Do you have to run over your whole testimony again or will your testimony fit the Hoboken job except that in Hoboken you do also load and unload freight cars?

A. In Hoboken also during the tax years in question we did load the sea-train ships.

[fol. 66] Q. Let me first, before you describe that, then, ask you whether that is the only other point that needs clarification?

A. I would say so; that is the only point.

Q. The wages and the working conditions and the agreements with the longshoremen and the destination of the ships, all the various operations we've covered describe what you do in Hoboken as well as in New York?

A. Yes.

Q. Now, what about the sea-train?

A. The sea-train, the only difference there is that instead of unloading a ship package by package we load the whole entire freight car right down inside the ship, it is placed on rails that there are already in the ship and then that particular car or cars are chocked and lashed in such a manner as to make them seaworthy and that ship goes out to sea with the miscellaneous cargo but in a freight car.

(Discussion off the record.)

Q. Does the taxpayer make up gangs and hire them out to steamship companies?

A. No.

Q. Mr. Clark, you spoke of the ships' sailing to foreign ports. Is the reverse of that true? Do they come from foreign ports?

A. Oh, yes.

Q. Mr. Clark, I think during these two hearings we've emphasized the loading of the ships. When you come to the unloading of the ships is everything that you have said true in reverse order?

A. Yes, it is.

Q. So that the only distinction in the operation is that the cargo is moving in the other direction?

A. That's right.

(Discussion off the record.)

[fol. 67] Cross-examination.

By Mr Cohen:

Q. What is the address of the taxpayer, Mr. Clark?

A. Seventeen State Street, New York City.

Q. Does it have any office or other place of business besides?

A. No, that is the main office.

Q. Does it transact all its business at that office except for the loading and unloading of boats?

A. It transacts all its business at that address.

Q. And does it receive contracts and enter contracts at this address?

A. That's right.

Q. No other address except this one?

A. That's right.

Q. Where does it have its machine shops?

A. The machine shop is located at the corner of 42nd Street and Second Avenue in Brooklyn.

Q. Are you familiar with the amount of business that was done by the taxpayer during these years to the extent that you could distinguish or differentiate between the amount of income received from work that was performed within the City of New York and work performed over in New Jersey?

A. I don't think I could answer that very intelligently.

Q. Did the taxpayer during any time during these taxable years sublet or subhire any of its employees to any other stevedoring companies for the performance or assistance in the performance of any of their contracts?

A. No, we did not.

Q. Who negotiates the various contracts for the taxpayer?

A. It is myself or the vice-president, Mr. Harold J. Beardell.

Q. Does the taxpayer maintain its bank accounts in the City of New York?

A. Yes, we do.

[fol. 68] Q. And performs all of its corporate functions within the City of New York?

A. Yes, we do.

Q. Is it a New York corporation?

A. It is.

Q. Does the taxpayer—is the taxpayer required to have a license from any governmental authority——

A. No.

Q. —in the performance of its duty? Do you file any certificate with the United States Shipping Board or with the Customs House?

A. May I ask what you mean by certificate.

Q. Certificate of doing business.

A. Not that I know of.

Q. Was any financial statement required of the taxpayer by any governmental authority during the taxable years?

A. None that I know of except the usual statement that's rendered to the Internal Revenue Department for tax purposes. That is the only one I know of.

Q. What other activities does the taxpayer engage in besides loading, unloading vessels, and making the inci-

dental repairs to keeps its equipment—its own equipment—in good order and condition?

A. None.

Q. Is it engaged in financing contracts of other stevedoring companies?

A. No, it does not.

Q. Does it have any interest directly or indirectly in any steamship companies or vessels or joint ventures?

A. None whatsoever.

Q. Does the taxpayer sell steamship tickets or assist in any way in the engaging of ship space for companies?

A. No, it doesn't.

Q. During the taxable years did any of these ships that were loaded by the taxpayer stop at any other ports of the United States upon its way to any destination to foreign ports?

A. Yes, Steamship Munargo.

[fol. 69] Q. Any others?

A. None others that I am acquainted with.

Q. Where did she stop and what did she do?

A. She stopped at Miami, she took passengers for Miami and cargo and picked up passengers and cargo at Miami. Her other two ports of call were Nassau and Havana.

(Discussion off the record.)

Mr. Saltzman: Let the record note that exhibits marked for identification have been returned to attorney for taxpayer.

Hearing adjourned to April 5, 1943 at ten o'clock.

OFFICE OF THE COMPTROLLER

Bureau of Excise Taxes

April 5, 1943 Room 516 10 A. M.

Mr. Cohen: It is hereby stipulated by the taxpayer and Special Deputy Comptroller that Exhibit 10 marked for identification shall be substituted by the original contract and received in evidence as Exhibit 10.

Mr. Lane: I ask that a photostat which I produce be marked in place of the original contract of November 15th, 1940.

Mr. Saltzman: Is that agreeable to you, Mr. Cohen?

Mr. Cohen: Yes, on the condition that the original can always be made available to us for examination and inspection at our office.

Mr. Lane: I agree to that.

[fol. 70] Mr. Saltzman (to stenographer): Mark the photostat of the document, described as a contract, dated November 15, 1940, between Munargo Line Company and John T. Clark & Son, Taxpayer's Exhibit 10 in evidence.

(Received and marked Taxpayer's Exhibit 10 in evidence.)

Mr. Cohen: As for Exhibit 9 for Identification, we will accept an agreement effective July 1, 1939, between Bucknall Steamship Company, Limited, and John T. Clark & Son, Inc. in lieu of the said exhibit.

Mr. Lane: In lieu of the original contract, effective July 1, 1939, I ask that a photostatic copy, which I produce, be received and marked in evidence.

Mr. Cohen: We will receive it upon the same condition as Exhibit 10.

Mr. Saltzman (to stenographer): Mark the photostatic copy of the document, described as an agreement between Ellerman and Bucknall Steamship Company, Limited, and John T. Clark & Son, Inc., effective from July 1, 1939, Taxpayer's Exhibit 9 in evidence.

(Received and marked Taxpayer's Exhibit Number 9 in evidence.)

(Discussion off the record.)

[fol. 71] David Joseph, residing at 180 East 79th Street, New York, produced as a witness on behalf of the taxpayer, after being duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Mr. Joseph, will you state your full name and address for the record?

A. David Joseph, 180 East 79th Street, New York City.

Q. What is your profession?

A. Accountant.

Q. Among your clients, do you include John T. Clark & Son, Inc.?

A. I do.

Q. Have you conducted an annual audit of their books?

A. We conduct a monthly audit.

Q. Monthly audit. How long have you been doing that?

A. I would say somewhere back to 1934—1932.

Q. Did you audit their books for the years 1938, 1939, 1940, and 1941?

A. I did.

Mr. Lane: Well, Mr. Saltzman, may I have the tax returns for those years?

Mr. Saltzman: Those returns have been marked in evidence.

By Mr. Lane:

Q. I show you Taxpayer's Exhibit 1 in evidence, the return of Excise Tax on gross receipts for the year 1938. I call your attention to item 11, total gross receipts, and ask you whether you can tell us what part of that total came from business done in New Jersey.

(Off the record.)

[fol. 72] Witness:

A. The total receipts indicated by the return are $879,942.65, which compares with my record of the total receipts for the year 1938. Of that total $165,076.80 was received for services rendered in the State of New Jersey.

Q. I show you Taxpayer's Exhibit 2 in evidence, Return of Excise Tax on Gross Receipts for the year 1939, and call your attention to item 11, total gross receipts of $1,169,219.24, and ask you what part of that figure came from business done in New Jersey.

A. Of that total, the sum of $73,780.03 was receipts from services performed in New Jersey.

Q. I show you Taxpayer's Exhibit 3, return of Excise Tax on Gross Receipts for the year 1940, and call your attention to item 12, which shows total gross receipts in the amount of $1,434,479.81, and ask you the same question with respect to that.

A. Of the total of gross receipts, the sum of $86,100.85 was for services rendered in the State of New Jersey.

Q. I show you Taxpayer's Exhibit 4 in evidence, Gen-

eral Business and Financial Tax return, gross receipts for the calendar year 1941, and call your attention to item 12, which shows total taxable receipts of $2,693,182.59, and ask you the same question with respect to that.

A. Of the total of gross receipts shown, the sum of $446,801.60 was for services rendered in the State of New Jersey.

Mr. Lane: That's all.

(Off the record.)

Mr. Lane: I think it should be made clear on the record [fol. 73] that taxpayer offers the foregoing testimony by Mr. Joseph subject to audit by the Comptroller. The offer is made merely to lay the foundation for a subsequent argument on a point of law and it is not intended to foreclose the right of the Comptroller to subsequently challenge the figures.

(Off the record.)

Mr. Cohen: The condition stated by Mr. Lane is accepted, provided that any time during these proceedings or at any subsequent time the Comptroller may substitute the audited figures for the income received from services rendered within the State of New Jersey at any time for any one or all of these years, and that the receipt of these figures is not intended to be an acceptance on the part of the Comptroller that these services were actually rendered in the State of New Jersey nor that these proceeds were received from such services.

Mr. Saltzman: Have you any question to ask of Mr. Joseph, Mr. Cohen?

Mr. Cohen: I have questions to ask in cross-examination on these figures and on the audit, but I would prefer to postpone them until such time as an audit is made of the taxpayer's records and our auditor's report will be available.

Mr. Lane: It is agreeable to me.

(Off the record.)

Mr. Saltzman: Hearing adjourned to May 6th, at 10:00 A. M.

[fol. 74] OFFICE OF THE COMPTROLLER

Bureau of Excise Taxes

June 8, 1942 Room 516 2 P. M.

GEORGE JOHN CLARK, residing at Contant Avenue, Haworth, New Jersey, recalled as a witness on behalf of the taxpayer, testified as follows:

Redirect examination.

By Mr. Ansnes:

Q. Mr. Clark, at the hearing held in this case on March 2, 1943, Mr. Lane asked you whether you did general stevedoring work for the Munargo Line Company in 1938 and 1939. On page 14 of the stenographer's minutes of that hearing it appears that you answered with respect to each year, "I don't think so." I hand you a paper entitled "Agreement entered into this 28th day of April, 1938 by and between Munargo Line Company, a Delaware corporation, hereinafter called the steamship company, and John T. Clark & Son, a New York corporation, hereinafter called the contractor," and ask you if that refreshes your recollection as to whether you did general stevedoring work for the Munargo Line Company in 1938.

A. Originally the question was asked from memory, wasn't it?

Q. Yes, that's correct.

A. This is the contract.

Q. You did general stevedoring business for Munargo Line Company in 1938?

A. Yes.

By Mr. Cohen:

Q. How long was this contract in force, Mr. Clark?

A. That contract, as near as my recollection goes, was [fol. 75] about somewheres in the neighborhood of a year and a half. I became confused when the question was asked because I thought the contract for that particular work was made out to the United Fruit Company, which is the owner of Munargo Steamship Line, but to be absolutely correct in my statement I had to say I don't know, because I didn't want to state it one way or the other.

Q. Did your corporation perform any work under this contract?

A. We did.

Q. Was it an isolated case or was it continuous work?

A. (No response.)

(Discussion off the record.)

By Mr. Ansnes:

Q. Mr. Clark, I hand you a letter on the letterhead of Munargo Line Company, dated March 7, 1939, addressed to John T. Clark & Son, 17 State Street, New York, New York, in which in the first paragraph it is stated, and I quote: "We confirm verbal agreement of March 4 with your Mr. J. Balbach relative to receiving and delivering cargo at Pier 48, North River, New York," and ask you whether that refreshes your recollection as to whether you did general stevedoring work for Munargo Line Company in 1939.

A. Well, this hasn't anything to do with stevedoring. This particular agreement has to do with the delivering and receiving of cargo, and we continued stevedoring under that original agreement there.

Q. Under the agreement dated April 28, 1938 which I handed to you?

A. That's right; that's the stevedoring contract. That is the furnishing of men to receive and deliver cargo.

[fol. 76] Q. You did do general stevedoring work for the Munargo Line Company in 1939?

A. That's right.

(Discussion off the record.)

Q. Did you under the letter of March 7, 1939 furnish men to any other corporation or organization for the purpose of performing work under that letter?

A. No.

Q. But the men to which you referred were your own employees?

A. That's right.

Q. They were paid by you for performing the work?

A. That's right.

By Mr. Cohen:

Q. What do you mean by furnishing men to remove cargo, Mr. Clark?

A. Well, originally the steamship company themselves were doing this particular work and found that it was better to have one man do all of the operations on the pier. This particular operation is fruits and perishable cargoes, and so forth; have to be loaded on the trucks; have to be loaded on to freight cars across the dock waiting to take outside shipment; and also for the handling of passengers' baggage—that means putting a few porters on to carry it down and put it aboard ship for them.

Q. Does this operation take place before the loading of the vessel or after?

A. It could take place while the vessel is loading, as well as after. I mean sailing day you are still working cargo as well as receiving passengers. All go down together and board the ship together.

Q. And is this service apart from your general stevedoring services?

[fol. 77] A. No; that's part of a stevedore's responsibility; only in some instances some companies prefer to do that themselves.

Q. You mean steamship companies?

A. Yes.

Q. How do you hire men in the performance of this operation?

A. We hire them in the same way that we hire longshoremen. The same man that hires the gangs that do the loading of the cargo hires the men and places them at the different places where he wants them to do this particular type of work, and if they are not doing this kind of work they don't stand around; they pitch right in and work in the gangs too, and if some passengers come down we put these men to work handling the baggage.

Q. Is the compensation different for this type of service than it is for regular stevedoring—that is, compensation paid to you?

A. Well, in some instances there isn't any compensation; it's gratis, and at other times you are paid on the basis of so much a man or so much an hour, or so much per passenger. It's been done that way.

Q. Is this a frequent type of service that your company performed in these years of 1938 to 1941?

A. Yes, we have been doing it right along on this particular line where they were handling these passengers.

Q. Is there any other type of services that your corporation rendered to these various steamship companies other than stevedoring and the services we were just discussing?

A. No.

Q. Did you ever have occasion during these four years to let out some of your men to other stevedoring companies?

A. No.

Q. To let out any of your employees to any of the steamship companies other than for the two types of services?

A. No—you mean to hire men and turn them over to [fol. 78] the steamship company to do with as they please? No; if we hire men we must be the ones that are responsible for every act of those men, so therefore our superintendents are the ones that give them the orders and not the men from the steamship company.

Q. About what percentage of the total gross receipts would you attribute to this matter of hiring of men for the services that you have just been describing?

A. Well, I couldn't answer that absolutely, Mr. Cohen, but I am reasonably sure that it's very very small; taking into consideration the entire payroll of a ship's operation, this particular type of work would be very very little.

Q. Would you venture a percentage?

A. I wouldn't like to.

By Mr. Saltzman:

Q. Referring to the type of services mentioned in this letter dated March 7, 1939, were these services covered in your contract with the Munargo Line? For example, take Taxpayer's Exhibit Number 10 in evidence, which is a contract between Munargo Line Company and John T. Clark & Son. Are such services included and covered by that contract?

(Discussion off the record.)

Witness:

A. Yes; this is a typical contract.

Q. That isn't responsive. Are the types of services referred to in this letter of March 7, 1939 included in the contracts, Taxpayer's Exhibit Number 10 in evidence?

A. Yes.

(Discussion off the record.)

[fol. 79] Q. Who paid the men performing the services referred to in this letter of March 7, 1939?

A. Who paid the laborers?

Q. That's right.

A. John T. Clark & Son.

Q. If you furnished the services of a baggage master, who paid them?.

A. John T. Clark & Son.

Q. And who paid any laborers that cleaned docks, passenger waiting rooms, or offices?

A. John T. Clark & Son.

By Mr. Ansnes:

Q. Such laborers were your employees?

A. They were.

By Mr. Saltzman:

Q. And who gave directions or orders to any of the men performing services referred to in the letter of March 7, 1939?

A. Our head foreman.

By Mr. Ansnes:

Q. Are the services to which you have been referring usual in certain types of stevedoring contracts?

A. Yes, they are.

Q. Mr. Clark, at the hearing held in this case on March 2, 1943, the following appears on page 10 of the stenographer's minutes, and I quote: "Look at the form of Plaintiff's Exhibits 8 and 9 for Identification and tell us whether they are typical of the contracts under which you operated during the times that those contracts were in effect." To which you answered, and I quote: "Yes, these are typical stevedoring contracts, nothing unusual in them at all." [fol. 80] I hand you Taxpayer's Exhibit 9 and Taxpayer's Exhibit 10 in evidence, and ask you to state whether those are typical stevedoring contracts.

A. Yes, they are.

By Mr. Cohen:

Q. Have you read those contracts?

A. Yes.

Q. Are you familiar with the terms of those contracts?

A. I couldn't quote them, no.

Q. How do you know that they are typical contracts?

A. From just glancing over them I can see that they are about what is usually in a stevedoring contract.

Q. Are you in charge of contracts for the taxpayer?

A. Sometimes.

Q. Do you negotiate the contracts?

A. Not usually.

(Discussion off the record.)

By Mr. Ansnes:

Q. Mr. Clark, at the hearings held in this matter on February 1, 1943 and March 2, 1943 you testified that in performing your work of loading and unloading ships one of your first operations is to prepare a plan of the ship to be loaded or unloaded. I hand you a paper showing in profile and from a vertical point of view what appears to be a plan of a ship, and ask you whether that is such a plan as to which you referred in your testimony.

A. It is.

Q. And where did you get this plan?

A. From our files.

Q. Will you state, without revealing the name of the ship, the date upon which she sailed, as set forth on that plan?

A. December 4th, 1939.

[fol. 81] Mr. Ansnes: I offer the paper, which I have characterized as a plan, in evidence, and ask permission to substitute for the original a photostatic copy which is in all respects the same as the original except that there is omitted the name of the ship, the name of John T. Clark & Son, and the date upon which the ship sailed.

I offer such plan in evidence.

By Mr. Cohen:

Q. Is this a plan that taxpayer corporation drew up on one of the jobs on which it performed services during the years under discussion here?

A. It is.

Q. Who drew this plan?

A. One of our plan clerks.

Q. And how does he draw one of these plans—from what sources of information?

A. He is supplied with a list of cargo going forward in a particular ship. During the course of the loading of that ship he keeps in constant contact with the head foreman in charge of the loading of that ship as to where the various cargoes are going, according to the original rough sketch that is laid out before the actual operation is started, and during the course of loading the ship he jots down on his plan exactly in what compartment—whether the hold, deck, between deck, on deck, or what have you; just where this cargo is going. The port of destination is arrived at by various colors of which there is a breakdown on the top here showing these colors so that the chief officer of that ship knows where the various cargo is stowed, so that when he gets to various ports he knows where the cargo is stowed. [fol. 82] Also, a copy of this cargo plan is given to the stevedore at the other end upon arrival of steamer so that he can see the type of cargo he must discharge and then organize his pier to receive such cargo, whether it's large stuff, small stuff, or penalty cargo such as wet hides or something that's obnoxious and must be stored on the pier away from other cargo. That's why it's necessary to have such a plan.

Q. And the purpose of the plan is what?

A. I think I have just explained that.

Q. To enable the unloading of the vessel and indicate where the cargo is after it has been loaded?

A. That's right.

Q. You perform both types of services, loading and unloading?

A. We do here in New York.

Q. When you unload, a plan is given to you by the steamship company?

A. It is.

Q. Now, is this plan here one given to you by the steamship company or one that your firm drew and gave to the steamship company?

A. This is one that we drew and gave to the steamship company.

Q. Your company loaded this vessel?

A. That's correct.

Q. And is the drawing of these plans the usual procedure?

A. It is.

Mr. Saltzman: Any objection, Mr. Cohen?

Mr. Cohen: No; we will take it for what it is worth.

Mr. Saltzman: Mark the photostatic copy of a loading plan Taxpayer's Exhibit Number 12 in evidence.

(Received and marked Taxpayer's Exhibit 12 in evidence.)

[fol. 83] By Mr. Ansnes:

Q. Mr. Clark, I ask you whether Taxpayer's Exhibit Number 12 in evidence is such a plan as you testified to in the hearings held in this matter on February 1, 1943 and March 2, 1943.

A. It is.

Mr. Ansnes: That's all I have to ask him.

Recross-examination.

By Mr. Cohen:

Q. Did your corporation also import or export any merchandise besides rendering stevedoring services during the four years at issue?

A. No.

Q. Does it receive any income from any other source whatsoever other than the two types of services which you testified to?

A. No.

Q. Does it do any financing of any kind?

A. No.

Q. Did it give discounts or rebates to anybody to obtain the contracts or the business during the years at issue?

A. Do you mean by that a sort of commission to get business?

Q. Yes.

A. No.

Q. Do you give any discounts to any of the steamship companies' officers or agents or others?

A. That would be pretty hard for me to say; I can't remember. There may have been some bill that was made out wrong, or something like that; I wouldn't want to answer that question just that way.

Q. Did it share the remuneration of the contracts with anybody during any of these years at issue?

A. No.

Q. Did it pay any commissions to any of the steamship companies—agents, employees or others—during any of the years at issue?

A. No.

[fols. 84-85] Q. Did the taxpayer have any subsidiary corporations?

A. No.

Q. Did it have any interests in other corporations during the years in issue?

A. You mean by that John T. Clark & Son as a company?

Q. Yes.

A. No.

Q. Did any of its officers, stockholders or directors have any interest in any other corporation?

Mr. Ansnes: I will object to that question. I think it is immaterial, has nothing to do with the tax liability of John T. Clark & Son.

Mr. Cohen: Well, the purpose of the question is to ascertain whether or not certain types of services are segregated by the taxpayer between itself and other companies which it owns or controls directly or indirectly.

Mr. Ansnes: The witness has testified that the taxpayer does not own any other corporation directly or indirectly, and I can't see the bearing on this question——

(Discussion off the record.)

(The stenographer read the last question.)

Mr. Cohen (to stenographer): Add to that question, "——engaged in the same or a similar line of business."

(Discussion off the record.)

Mr. Saltzman: Objection sustained.

Mr. Ansnes: Taxpayer rests.

Mr. Saltzman: Anything further, Mr. Cohen?

Mr. Cohen: No, except for the reservations appearing on pages 5 and 6 of the minutes of April 5, 1943.

Mr. Saltzman: Hearing closed; decision reserved.

Taxpayer's Exhibit 1 in Evidence

Form 30 B — PAID UNDER PROTEST — Page 1 of Return

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE—EMERGENCY REVENUE DIVISION
90 LAFAYETTE STREET, NEW YORK CITY—WOrth 2-4780

THE TAX DUE ON THIS RETURN IS PAYABLE ON JUNE 15, 1939

Do Not Mail Coin, Currency or Stamps in Payment of Tax. Cash Payments to be Legal, must be made Only to the Cashier at his Window. Payment should be made in the Borough where the Taxpayer Conducts his Business, before 3 o'clock P. M., Saturdays 12 Noon. The Borough Offices of the Bureau of City Collections are Shown Hereinbelow.

Mail This Return with Remittance to the City Collector On or Before June 15, 1939

RETURN OF EXCISE TAX ON GROSS RECEIPTS

(Pursuant to Local Law 20 of 1938)

Local Law 20 of 1938 (Chapter 41-0 of the Administrative Code) imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment.

GROSS RECEIPTS FOR THE CALENDAR YEAR 1938

or Period Began ..... 193... and Ended ..... 193...

A period other than the calendar year 1938 is to be used only by a person commencing business after January 1, 1938, as set forth in Section 041-3.0 (g) of the law (See Instruction Sheet).

DO NOT WRITE IN THESE SPACES

File Code

Business Code

Entered by

Audited by

MAKE CHECKS PAYABLE TO THE ORDER OF CITY COLLECTOR

This Space for Name and Address

TAXPAYER'S EXHIBIT NO 2 IN EVIDENCE 2/14/43

JOHN T. CLARK & SON
17 STATE STREET
NEW YORK N Y

N 142992

1910

11766/17

ANSWER ALL QUESTIONS ON THIS FORM

KIND OF BUSINESS Stevedores — Entered on N.Y. 7381

DATE BUSINESS COMMENCED March 1910 — D. 6-15-739

MAKE CHECKS PAYABLE TO CITY COLLECTOR

GROSS RECEIPTS

Item and Instruction Number				
1.	Receipts from sales in trade or business (Less: Sales returned) (Not included in Item 2)			
2.	Receipts from sales as allocated (Item 34, Page 2 of Return)			
3.	Receipts from services rendered (other than from profession or vocation) (Not included in Item 4)			
4.	Receipts from services rendered as allocated (Item 44, Page 2 of Return)			
5.	Receipts from profession or vocation		879	942 65
6.	Receipts from interest on bank deposits, notes, bonds, loans, etc.			
7.	Receipts from dividends on stocks of domestic and foreign corporations			
8.	Receipts from royalties			
9.	Receipts from premiums received in and from risks in New York City from the business of insurance			
10.	Other receipts from commercial activities (Explain in Schedule D)			
11.	Total gross receipts to be used as a measure in computing the tax (Items 1 to 10, inclusive) (*If this return is for a period less than one year, compute tax as indicated below*, Items 13 to 18, inclusive)		879	942 65
12.	Tax due the City of New York (1/10 of 1% of Item 11)			879 94
13.	Penalties and/or interest (See *Instruction Sheet*) June 15, 1939 to June 15, 1943 — 10%			105 59
14.	Total tax, penalties and/or interest (Item 12 plus Item 13)			985 53

COMPUTATION OF TAX BASED ON A RETURN FOR A PERIOD LESS THAN ONE YEAR (SEE INSTRUCTION SHEET)

15.	Total gross receipts (Item 11)		
16.	Number of days for which this return is made (Period shown above)	Days	
17.	Total gross receipts (on a per annum basis) to be used as a measure in computing the tax (Item 15 multiplied by 360 and the product thereof divided by Item 16)		
18.	Tax due the City of New York (1/10 of 1% of Item 17)		
19.	Penalties and/or interest (See *Instruction Sheet*)		
20.	Total tax, penalties and/or interest (Item 18 plus Item 19)		

LOCATION OF BOROUGH OFFICES OF THE BUREAU OF CITY COLLECTIONS

MANHATTAN	Room 100, Municipal Building
THE BRONX	Tremont and Arthur Avenues
BROOKLYN	Room 1, Municipal Building
QUEENS	Court Square, Long Island City
RICHMOND	Room 12, Borough Hall, St. George, S. I.

Cashier's Stamp
32-219

1 800 40 RECOPAY Check

3393198553

Receipt of payment will be recorded by machine in this space. Do not accept hand-written receipt.

1/1

SCHEDULE A
ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SALES IN INTERSTATE COMMERCE
(TO BE USED BY PERSONS HAVING RECEIPTS FROM SALES IN INTERSTATE COMMERCE)

Item No.	RECEIPTS		Amount
21.	Gross receipts from sales (Less: Sales returned)		$
22.	Less—Receipts from sales in foreign commerce (Less: Sales returned)	$	
23.	Receipts from non-allocable and non-taxable sales: Sales returned	$	
24.	Wholly taxable and allocable receipts (Item 21 minus Items 22 and 23)		$
25.	Less—Wholly taxable receipts (Item 1, Page 1 of Return)		$
26.	Allocable receipts (Receipts from sales in interstate commerce)		$
	Divide (a) by (b) to obtain percentage		
27.	(a) Average real and tangible personal property within New York City	$	%
	(b) Average real and tangible personal property within the United States	$	
28.	(a) Wages, salaries and other personal service compensation in New York City	$	%
	(b) Wages, salaries and other personal service compensation in the United States	$	
29.	(a) Wholly taxable receipts (Item 25) plus ½ of allocable receipts (½ of Item 26)	$	%
	(b) Wholly taxable and allocable receipts (Item 24)	$	
30.	Total percentages (Items 27 to 29, inclusive)		%
31.	Average percentage (Item 30, divided by three)		%
32.	Allocable receipts (Item 26) multiplied by Item 31 or 66⅔% whichever is less		$
33.	⅓ of allocable receipts (⅓ of Item 26)		
34.	Allocated receipts subject to tax (Item 32 or Item 33, whichever is greater) (Enter as Item 2, Page 1 of Return)		$

SCHEDULE B
ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SERVICES IN INTERSTATE COMMERCE
(TO BE USED BY PERSONS HAVING RECEIPTS FROM SERVICES IN INTERSTATE COMMERCE)

35.	Gross receipts from passenger service	$	
36.	Gross receipts from freight service		
37.	Total (Item 35 plus Item 36)		$
38.	Less—Gross receipts from foreign commerce	$	
39.	Gross receipts from non-allocable and non-taxable services		$
40.	Wholly taxable and allocable receipts (Item 37, minus Items 38 and 39)		$
41.	Less—Wholly taxable receipts (Item 3, Page 1 of Return)		$
42.	Allocable receipts (Item 40 minus Item 41)		$
	Divide (a) by (b) to obtain percentage		
43.	(a) Number of passenger and/or freight miles within the State of New York used as a basis in determining the rates charged for services rendered		%
	(b) Number of passenger and/or freight miles within the United States used as a basis in determining the rates charged for services rendered		
44.	Allocated receipts subject to tax (Item 42 multiplied by percentage obtained in Item 43) (Enter as Item 4, Page 1 of Return)		$

SCHEDULE C
REAL AND TANGIBLE PERSONAL PROPERTY EMPLOYED IN BUSINESS

	Classification of Property	TOTAL Real and Tangible Personal Property Employed Within the United States	Real and Tangible Personal Property Employed Within the City of New York	Real and Tangible Personal Property Employed Within the United States But Without the City of New York	
				Amount	City or Town and State
45.	Real Estate (See note below)	$	$	$	
46.	Machinery				
47.	Motor vehicles and other delivery equipment				
48.	Merchandise purchased for sale				
49.	Other tangible personal property				
50.	Total real and tangible personal property (Items 45 to 49, inclusive) (Enter on Item 27)	$	$	$	

NOTE—Real property within the City of New York shall include all property subject to tax as real estate under the Tax Law of the State of New York.

Form 99 B

Page 3 of Return

SCHEDULE D

DETAILS OF ITEM 10, PAGE 1, OF RETURN

EXPLANATION	Amount
	$

SCHEDULE E

ENTER HEREINBELOW ALL GROSS RECEIPTS NOT INCLUDED ON PAGE 1, OF RETURN

Nature of Receipt	Reason for Exclusion from Gross Receipts	Amount
		$

ANSWER ALL OF THE FOLLOWING QUESTIONS

The books of this taxpayer are in the care of Taxpayer

Located at 17 State Street, New York City

Was a return filed under Local Law No. 22 of 1937, as amended? Yes

If so, give name and address under which said return was filed Same

Is this business in any way an outgrowth, result, continuation or reorganization of a business or businesses in existence prior to the date shown on page 1 of the return? No If answer is "yes," give name and address of such predecessor business and the date of the change in entity

Was the present business discontinued prior to June 30, 1939? No

If answer is "yes," give date when operations were discontinued

Was the business legally dissolved? Date of dissolution

Remarks:

1/3

86b

ALLOCATION AND APPORTIONMENT OF RECEIPTS IN INTERSTATE COMMERCE

EXTRACT—ARTICLE 33B: Section 041-2.0(b) of the Administrative Code of the city of New York provides that where a receipt in its entirety cannot be subjected to the Business Tax by reason of the provisions of the constitution of the United States or any other provision of law, the comptroller shall establish rules and regulations and methods of allocation and evaluation to the end that only that part of such receipt which is properly attributable and allocated to the doing of business in the city of New York shall be taxed.

A person who claims that his receipts are not taxable, in whole or in part, by reason of the provisions of the constitution of the United States or any other provision of law, shall include in his return of gross receipts the information and computations called for below in this article, with respect to the period covered by the refund. Any such person who fails to include in his return the information called for, shall be deemed to have waived all rights to an allocation of his receipts, in whole or in part, by reason of the constitution of the United States or any other provision of law.

INFORMATION AND COMPUTATIONS REQUIRED IN ALLOCATING RECEIPTS FROM SALES IN INTERSTATE COMMERCE

INFORMATION REQUIRED

1. The average of the value of the real and tangible personal property of the business within New York City, at the beginning and end of the measuring year.

2. The average of the value of the real and tangible personal property of the business both within and without New York City but within the United States only, at the beginning and end of the measuring year.

3. The total wages, salaries and other personal service compensation paid during the measuring year in connection with the business carried on in New York City. (Wages, salaries and other personal service compensation shall be allocated to New York City when paid to employees who work in, or from, or are attached to, places of business situated within New York City.)

4. The total wages, salaries and other personal service compensation paid during the measuring year in connection with the business carried on within and without New York City but within the United States only.

5. Gross receipts (hereinafter referred to as "wholly taxable receipts") received during the measuring year in, or by reason of any sales made or services rendered or commercial or business transactions had in the city of New York, and not subject to allocation.

6. Gross receipts received during the measuring year in, or by reason of any sales made or services rendered or commercial or business transactions which are required to be allocated by virtue of the provisions of the constitution of the United States or other provision of law (hereinafter referred to as "allocable receipts").

COMPUTATION OF RECEIPTS SUBJECT TO TAX

The amount of gross receipts subject to the tax at the statutory rate or rates shall be determined as follows: (a) Compute the percentage which the average of the value of the real and tangible personal property of the business within New York City, at the beginning of the measuring year, and at the end of the measuring year (Item 1), bears to the average of the value of the real and tangible personal property of the business both within and without New York City but within the United States only, at the beginning of the measuring year, and at the end of the measuring year (Item 2).

(b) Compute the percentage which the total wages, salaries and other personal service compensation paid during the measuring year in connection with the business carried on in New York City (Item 3), bears to the total wages, salaries and other personal service compensation paid during the measuring year in connection with the business carried on within and without New York City but within the United States only (Item 4).

(c) Compute the percentage which the sum of the wholly taxable receipts (Item 5) plus one-third (1/3) of the allocable receipts (1/3 of Item 6), bears to the sum of the wholly taxable receipts (Item 5) plus the entire allocable receipts (Item 6).

(d) Determine the average of the three percentages so obtained (Items (a), (b) and (c) above) by adding them and dividing the total by three. In the event such average percentage exceeds 66⅔ percent, it shall be reduced to 66⅔ percent, for the purposes of the computation to be made under Method 1 below.

METHOD 1—Apply the average percentage thus derived (Item (d) but in no event to exceed 66⅔ percent) to the allocable receipts (Item 6) and, to the amount so obtained, add the wholly taxable receipts (Item 5).

METHOD 2—Compute one-third (1/3) of the allocable receipts (1/3 of Item 6) and, to the amount so obtained, add the wholly taxable receipts (Item 5).

GROSS RECEIPTS SUBJECT TO TAX

The amount of gross receipts subject to the tax at the statutory rate or rates is the amount of receipts resulting from Method 1 or Method 2, whichever is greater.

NOTE—The term "measuring year," as used in this article, refers to the year or, if less than a year, to the period the receipts of which are used as the measure of the tax.

AFFIDAVIT OF TAXPAYER

I swear (or affirm) that this return, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 20 of 1938 and the regulations issued under authority thereof.

GOMEZ V. CLARK & SON

Name of Business or Taxpayer

Harry H. Clark, Pres.

Agent or officer of corporation, trustee, etc.

Title

Sworn to and subscribed before me

this 16 day of June, 1941

Stanley Oliver

Signature of officer administering oath

Notary Public, New York County

N.Y. Co. Clk's No. 89 Reg. No. 2-O-114

Commission Expires March 30, 1943

If this return was prepared by some person other than an officer, partner or employee of the taxpayer, the following affidavit must be executed:

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules) is a true, correct and complete statement of all the information with respect to the business tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sidney Terata

Signature of person preparing this return

Arnold Graphic Company

Name of firm

Sworn to and subscribed before me

this 16 day of June, 1941

Stanley Oliver

Signature of officer administering oath

Notary Public, New York County

N.Y. Co. Clk's No. 89 Reg. No. 2-O-114

Commission Expires March 30, 1943

[fol. 87] John T. Clark & Sons
17 State St.
New York, N. Y.

June 14, 1941

City Collector, Department of Finance, Room 100, Municipal Building, New York, New York.

DEAR SIR:

Enclosed herewith is my return of excise tax on gross receipts (Form 39 B) for the calendar year 1938, together with my check to your order in the amount of $879.94, in full payment of the tax shown due on the return. I wish to reserve my rights to recover all or any portion of such payment, and, accordingly, make such payment under protest and solely for the purpose of avoiding the imposition of any penalties and the waiver of any rights which I might otherwise have. In addition thereto the following grounds of protest are asserted.

1. Local Law 20 of 1938, under which said tax is assessed, is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States in that it purports to tax receipts of the taxpayer derived from sales in interstate and foreign commerce and thus constitutes a burden on interstate and foreign commerce.

2. Said local law is in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York in [fol. 88] that it deprives me of property without due process of law.

3. Said local law is invalid in that it delegates to the Comptroller of the City of New York power and authority to establish rules and regulations and/or methods of allocation and evaluation of receipts derived from transactions in interstate and foreign commerce.

4. Said local law is in violation of the Enabling Act, Laws of 1934, Chapter 873, as amended, in that it purports to authorize the imposition of a tax on transactions originating and/or consummated outside of the territorial limits of the City of New York.

5. The rules and regulations and methods of allocation and evaluation adopted by the Comptroller of the City of New York in the Regulations promulgated by him as of April 1, 1939, and said regulations as amended, purporting to be under and pursuant to said local law, are arbitrary, confiscatory and unreasonable, and are contrary to the provisions of said local law and operate to deprive me of property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York.

6. The Enabling Act, Laws of 1934, Chapter 873, as amended, purporting to grant authority to the City of New York to enact said local law is invalid and contrary to Article I, Section 8, Clause 3 and to the Fourteenth Amendment of the Constitution of the United States and Article I, [fol. 89] Section 6 of the Constitution of the State of New York in that it purports to authorize the imposition of a tax based upon the gross receipts of a person doing business in the City of New York.

7. Moreover it is the taxpayer's contention that its income as stevedore is tax exempt as interstate or foreign commerce in accordance with Puget Sound Stevedoring Co. v. Tax Commission of State of Washington et al ('37), 302 U. S. 90, 58 Sup. Ct. 72.

Very truly yours.

(Here follow 4 photolithographs, side folios 90, 90a, 90b, 90c.)

Taxpayer's Exhibit 2 in Evidence

Form 30B — PAID UNDER PROTEST — Page 1 of Return

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE—EMERGENCY REVENUE DIVISION
90 LAFAYETTE STREET, NEW YORK CITY—WOrth 2-4710

THE TAX DUE ON THIS RETURN IS PAYABLE ON JUNE 15, 1940

Do Not Mail Coin, Currency or Stamps in Payment of Tax. Cash Payments to be Legal Must Be Made Only to the Cashier at His Window. Payment Should Be Made in the Borough Where the Taxpayer Conducts His Business, Before 3 P. M., Saturdays 12 Noon. The Borough Offices of the Bureau of City Collections are Shown Hereinbelow.

Mail This Return with Remittance to the City Collector On or Before June 15, 1940

RETURN OF EXCISE TAX ON GROSS RECEIPTS

(Pursuant to Local Law No. 103 of 1939)

Local Law No. 103 of 1939 (Chapter 41-B of the Administrative Code) imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment [illegible]

GROSS RECEIPTS FOR THE CALENDAR YEAR 1939

or Period Begun ____ 19__ and Ended ____ 19__

A period other than the calendar year 1939 is to be used only by a person commencing business after January 1, 1939, as set forth in Section B41-5.0 (a) of the law (See Instruction Sheet).

PRINT NAME, ADDRESS AND FILE NUMBER

JOHN T. CLARK & SON
17 STATE STREET
NEW YORK N Y

B-316992

YES'S [illegible] 2/1/43 N2 [illegible] 1CLDCh7

FOR DEPARTMENTAL USE ONLY

Bus. Code ____
Pay. Code 3
Refer to Liens ____
Int. Due $ 2.44 (A)
Tax Paid ____ .65
Balance $ 1.77 48
Penalty (5%) ____
Penalty (10%) ____
Total $ ____
Checked by ____
Bill No. 7369
Billed by BB-9/2 141

KIND OF BUSINESS Stevedoring
DATE BUSINESS COMMENCED March 1910

MAKE CHECKS PAYABLE TO CITY COLLECTOR

GROSS RECEIPTS

1. Wholly taxable receipts from sales in trade or business (Less: Sales returned) (Not included in Item 2)				
2. Allocated receipts from sales in interstate commerce (Item 33, Schedule A, Page 2 of Return)				
3. Wholly taxable receipts from services rendered (other than from profession, vocation, etc.) (Not included in Item 4)			1 109 239 96	
4. Allocated receipts from services in interstate commerce (Item 46, Schedule C, Page 3 of Return)				
5. Receipts from profession or vocation or personal services				
6. Receipts from interest on bank deposits, notes, bonds, loans, etc.				
7. Receipts from dividends on stocks of domestic and foreign corporations				
8. Receipts from royalties				
9. Receipts from premiums received in and from risks in New York City from the business of insurance				
10. Other receipts from commercial activities (Explain in Schedule D)				
11. Total gross receipts to be used as a measure in computing the tax (Items 1 to 10, inclusive) (If this return is for a period less than one year, complete but do not submit below, Items 13 to 18, inclusive)			1 109 239 96	
12. Tax due the City of New York (1/10 of 1% of Item 11)			1 109 [illegible]	
13. Penalties and/or Interest (See Instruction Sheet) June 15, 1940 to June 15, 1943 2¼ 03			66 [illegible]	
14. Total tax, penalties and/or interest (Item 12 plus Item 13)			1 [illegible]	

COMPUTATION OF TAX BASED ON A RETURN FOR A PERIOD LESS THAN ONE YEAR (SEE INSTRUCTION SHEET)

15. Total gross receipts (Item 11)				
16. Number of days covered by this return (Period shown above)				Days
17. Total gross receipts (on a per annum basis) to be used as a measure in computing the tax (Item 15 multiplied by 365 and the product thereof divided by Item 16)				
18. Tax due the City of New York (1/10 of 1% of Item 17)				
19. Penalties and/or Interest (See Instruction Sheet)				
20. Total tax, penalties and/or interest (Item 18 plus Item 19)				

LOCATIONS OF BOROUGH OFFICES OF THE BUREAU OF CITY COLLECTIONS

MANHATTAN ..... Room 109, Municipal Building
THE BRONX ..... Tremont and Arthur Avenues
BROOKLYN ..... Room 1, Municipal Building
QUEENS ..... Court Square, Long Island City
RICHMOND ..... Room 12, Borough Hall, St. George, S. I.

MAKE CHECKS PAYABLE TO CITY COLLECTOR

Cashier's Stamp 32-219

JA 1941 A80639 RECPAY Check — [illegible]

Receipt or Payment Will Be Endorsed or Marked in This Space. Do Not Accept Hand-written Receipts.

2/1
90

SCHEDULE A

ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SALES IN INTERSTATE COMMERCE

(TO BE USED BY PERSONS HAVING RECEIPTS FROM SALES IN INTERSTATE COMMERCE)

Item No.	RECEIPTS	Amount
21.	Gross receipts from sales (Less: Sales returned)	$
22.	Less—Receipts from sales in foreign countries, (Less: Sales returned) (Explain in Schedule E)	$
23.	Non-allocable and non-taxable receipts (Less: Sales returned) (Explain in Schedule E)	$
24.	Wholly taxable and allocable receipts (Item 21 minus Items 22 and 23)	$
25.	Less—Wholly taxable receipts (Enter as Item 1, Page 1 of Return)	
26.	Allocable receipts (Receipts from sales in interstate commerce subject to allocation) (Item 24 minus Item 25)	$

IMPORTANT

Before proceeding further, answer the following questions:

(a) Is your entire real and tangible personal property located wholly within New York City?

(b) Are the wages, salaries and other personal service compensation paid during the year by you wholly applicable to employees who work in, or from, or are attached to, your place of business in New York City?

If your answers to both questions are "Yes", then you need not submit the information requested in Items 27 to 31, inclusive, and you need not prepare Schedule B. In such event, insert a percentage of 66⅔% in the space provided under Item 32 and compute Item 33 as indicated therein.

Answer "Yes" or "No"

Answer "Yes" or "No"

	Divide (a) by (b) to obtain percentage		
27.	(a) Average real and tangible personal property within New York City	$	
	(b) Average real and tangible personal property within the United States	$	
28.	(a) Wages, salaries and other personal service compensation in New York City	$	%
	(b) Wages, salaries and other personal service compensation in the United States	$	
29.	(a) Wholly taxable receipts (Item 25) plus 1/3 of allocable receipts (1/3 of Item 26)	$	%
	(b) Wholly taxable and allocable receipts (Item 24)	$	
30.	Total percentages (Items 27 to 29, inclusive)		%
31.	Average percentage (Item 30 divided by three)		%
32.	Percentage to be used in computing allocated receipts subject to tax (Indicate below percentage applicable):		
	Average percentage, as per Item 31		
	If average percentage exceeds 66⅔%, use 66⅔%		%
	If average percentage is less than 33⅓%, use 33⅓%		
33.	Computation of allocated receipts subject to tax:		
	Allocable receipts (Item 26) multiplied by Item 32 (Enter as Item 2, Page 1 of Return)		$

SCHEDULE B

AVERAGE VALUE OF REAL AND TANGIBLE PERSONAL PROPERTY EMPLOYED IN BUSINESS

	Description of Property	TOTAL Real and Tangible Personal Property Owned and Rented, Wherever Situated	Real and Tangible Personal Property Situated Within the City of New York	Real and Tangible Personal Property Situated Within the City of New York	
				Amount	City or Town and State
34.	Real estate (See note below)	$	$	$	
35.	Machinery				
36.	Motor vehicles and other delivery equipment				
37.	Merchandise inventory				
38.	Other tangible personal property				
39.	Total real and tangible personal property (Items 34 to 38, inclusive) (Enter as Item 27)	$	$	$	

NOTE.—Real property within the City of New York shall include all property subject to tax as real estate under the Tax Law of the State of New York.

2/2

SCHEDULE C
ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SERVICES IN INTERSTATE COMMERCE

(TO BE USED BY PERSONS HAVING RECEIPTS FROM SERVICES IN INTERSTATE COMMERCE WHERE MILEAGE IS EMPLOYED AS A BASIS IN DETERMINING THE RATES CHARGED FOR SERVICES RENDERED)

Item No.		
60.	Gross receipts from passenger service	
61.	Gross receipts from freight service	
62.	Total (Item 60 plus Item 61)	
63.	Less—Receipts in foreign commerce (Explain in Schedule E)	
64.	Non-allocable and non-taxable receipts (Explain in Schedule E)	
65.	Wholly taxable and allocable receipts (Item 62 minus Items 63 and 64)	
66.	Less—Wholly taxable receipts (Enter as Item 3, Page 1 of Return)	
67.	Allocable receipts (Receipts from services in interstate commerce subject to allocation) (Item 65 minus Item 66)	

COMPUTATION OF ALLOCATED RECEIPTS SUBJECT TO TAX

List Each Interstate Route Separately	Total Route Miles in the United States	Route Miles in New York State	Percentage to Be Used in Allocating Receipts	Revenue from Route: Allocable Receipts	Revenue from Route: Allocated Receipts Subject to Tax
			%		
			%		
			%		
			%		
			%		
			%		
			%		
			%		
			%		
			%		
			%		
			%		
Enter total allocated receipts as Item 4, Page 1 of Return					

Remarks:

SCHEDULE D
DETAILS OF ITEM 10, PAGE 1 OF RETURN

EXPLANATION	Amount

Remarks:

Form 40B

SCHEDULE E

EXPLAIN HEREINBELOW THE DEDUCTIONS TAKEN AS ITEMS 22, 23, 43 AND 44, AND ANY OTHER ITEMS EXCLUDED FROM TAXABLE RECEIPTS ON PAGE 1 OF RETURN

Nature of Receipt	Reason for Deduction or Exclusion from Gross Receipts	Amount
		$
		$

ANSWER ALL OF THE FOLLOWING QUESTIONS

The books of the taxpayer are in the care of Taxpayer

Located at 17 State Street, New York City

Was a return filed under Local Law No. 20 of 1939? Yes

If so, give name and address under which said return was filed Same

Is this business in any way an outgrowth, result, continuation or reorganization of a business or businesses existence prior to the date shown on Page 1 of the return? No If answer is "Yes", give name and address of such predecessor business and the date of the change in entity

Was the present business discontinued prior to June 30, 1940? No

If answer is "Yes", give date when operations were discontinued

Was the business legally dissolved? Date of dissolution

Remarks:

If this return was prepared by some person other than the taxpayer, an officer, partner or employee of the taxpayer, the following affidavit must be executed:

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules) is a true, correct and complete statement of all the information with respect to the business tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sidney Fenton

Signature of person preparing this return

David Lowitz & Company

Name of firm

Sworn to and subscribed before me

this 16 day of June, 1941

Stanley Olins

Signature of officer administering oath

Notary Public, New York County

N.Y. Co. Clk's No. 30 Reg. No. 2-0-114

Commission Expires March 30, 1943

AFFIDAVIT OF TAXPAYER

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 105 of 1939 and the regulations issued under authority thereof.

John T. Clark & Son

Name of Taxpayer

Signature of Taxpayer

Agent or officer of corporation, partnership, etc.

Pres.

Title

Sworn to and subscribed before me

this 16 day of June, 1941

Stanley Olins

Signature of officer administering oath

Notary Public, New York County

N.Y. Co. Clk's No. 30 Reg. No. 2-0-114

Commission Expires March 30, 1943

2/4

90c

[fol. 91] John T. Clark & Sons, 17 State St., New York, N. Y.

June 14, 1941.

City Collector, Department of Finance, Room 100, Municipal Building, New York, New York

DEAR SIR:

Enclosed herewith is my return of excise tax on gross receipts (Form 40 B) for the calendar year 1939, together with my check to your order in the amount of $1,109.22, in full payment of the tax shown due on the return. I wish to reserve my rights to recover all or any portion of such payment, and, accordingly, make such payment under protest and solely for the purpose of avoiding the imposition of any penalties and the waiver of any rights which I might otherwise have. In addition thereto the following grounds of protest are asserted.

1. Local Law 103 of 1939, under which said tax is assessed, is in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States in that it purports to tax receipts of the taxpayer derived from sales in interstate and foreign commerce and thus constitutes a burden on interstate and foreign commerce.

2. Said local law is in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, [fol. 92] Section 6 of the Constitution of the State of New York in that it deprives me of property without due process of law.

3. Said local law is invalid in that it delegates to the Comptroller of the City of New York power and authority to establish rules and regulations and/or methods of allocation and evaluation of receipts derived from transactions in interstate and foreign commerce.

4. Said local law is in violation of the Enabling Act, Laws of 1934, Chapter 873, as amended, in that it purports to authorize the imposition of a tax on transactions originating and/or consummated outside of the territorial limits of the City of New York.

5. The rules and regulations and methods of allocation and evaluation adopted by the Comptroller of the City of New York in the Regulations promulgated by him as of

April 1, 1939, and said regulations as amended, purporting to be under and pursuant to said local law, are arbitrary, confiscatory and reasonable, and are contrary to the provisions of said local law and operate to deprive me of property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York.

6. The Enabling Act, Laws of 1934, Chapter 873, as amended, purporting to grant authority to the City of New York to enact said local law is invalid and contrary to Article I, Section 8, Clause 3 and to the Fourteenth Amendment of the Constitution of the United States and Article I, [fol. 93] Section 6 of the Constitution of the State of New York in that it purports to authorize the imposition of a tax based upon the gross receipts of a person doing business in the City of New York.

7. Moreover it is the taxpayer's contention that its income as stevedore is tax exempt as interstate or foreign commerce in accordance with Puget Sound Stevedoring Co. v. Tax Commission of State of Washington et al. ('37), 302 U. S. 90, 58 Sup. Ct. 72.

Very truly yours, —— ——.

(Here follow 4 Photolithographs, side folios 94, 94a, 94b, 94c)

Taxpayer's Exhibit 3 in Evidence.

PAID UNDER PROTEST

Form 41B-41038-31441 (114) Page 1 of Returns

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE—EMERGENCY REVENUE DIVISION
50 LAFAYETTE STREET, NEW YORK CITY—WOrth 2-4780

THE TAX DUE ON THIS RETURN IS PAYABLE ON JUNE 16, 1941.
NOTE—A person who is required to file a return for a basis period beyond May 1, 1941 may file such return on or before August 1, 1941 and pay the tax due at such time.

MAKE CHECK, DRAFT OR MONEY ORDER PAYABLE TO CITY COLLECTOR

Mail this Return with Remittance to the City Collector On or Before the Due Date.

RETURN OF EXCISE TAX ON GROSS RECEIPTS
(Pursuant to Local Law No. 78 of 1940)

Local Law No. 78 of 1940 (Chapter 41-B of the Administrative Code) imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment.

GROSS RECEIPTS FOR THE CALENDAR YEAR 1940

or Period Began ..... 19 ..... and Ended ..... 19 .....

PRINT NAME, ADDRESS AND FILE NUMBER

JOHN T CLARK & SON B-142992
17 STATE ST
NEW YORK N Y

TAXPAYER'S 3
2/1143 M2

FOR DEPARTMENTAL USE ONLY

Bus. Code .....
Pay. Code .....
Refer to Line .....
Tax Due $ .....
Tax Paid .....
Balance $ .....
Penalty .....
Total $ .....
Checked by .....
Bill No. .....
Billed by .....

KIND OF BUSINESS Stevedoring
(Indicate clearly type of business, for example: Manufacturer—Ladies' Dresses; Wholesale Furniture; Automobile Service Station; etc.)

DATE BUSINESS COMMENCED March 1910

Item No.	GROSS RECEIPTS				
1.	Wholly taxable receipts from sales in trade or business (Less: Sales returned)	$			
2.	Allocated receipts from sales in interstate commerce (Item 28—Schedule A or Item 54—Schedule C)				
3.	Wholly taxable receipts from trade or business of a service nature (Not from profession, vocation, etc.)			1 434 394	69
4.	Allocated receipts from services (traffic) in interstate commerce (Item 64—Schedule D)				
5.	Receipts from profession or vocation or personal services				
6.	Receipts from interest on bank deposits, notes, bonds, loans, etc.			85	12
7.	Receipts from dividends on stocks of domestic and foreign corporations				
8.	Receipts from royalties, rentals of personal property, etc.				
9.	Receipts from premiums received by an insurance company from risks in New York City				
10.	Receipts from commissions earned as insurance agent, insurance broker or insurance underwriter				
11.	Other receipts from commercial activities (Attach schedule)				
12.	Total gross receipts to be used as a measure in computing the tax (Items 1 to 11, inclusive)	$		1 434 479	81
13.	Tax due the City of New York (1/10 of 1% of Item 12)	$		1 434	48
14.	Penalty and/or interest				
15.	Total tax, penalties and/or interest (Item 13 plus Item 14)	$		1 434	48

DESK AUDITED.
SEP 3 1941
ACCEPTED L H B.

AFFIDAVIT

I swear (or affirm) that this return of gross receipts, including the accompanying schedules or statements, has been examined by me, and is to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 78 of 1940 and the regulations issued under authority thereof.

Sworn to and subscribed before me this 11th day of June 194[illegible]

Stanley Oliver
Signature of officer administering oath
STANLEY OLIVER
Notary Public, New York County
N.Y. Co. Clk's No. 30 Reg. No. 3-O-114
My commission expires March 30, 1943

John T. Clark & Son
Name of Business or Taxpayer

[signature]
Agent or officer if corporation, trustee, etc.

Pres.
Title

LOCATION OF BOROUGH OFFICES OF THE BUREAU OF CITY COLLECTIONS

MANHATTAN ..... Room 109, Municipal Building
THE BRONX ..... Tremont and Arthur Avenues
BROOKLYN ..... Room 1, Municipal Building
QUEENS ..... Borough Hall, Kew Gardens
RICHMOND ..... Room 12, Borough Hall, St. George, S. I.

53118 Cashier's Stamp

JUN 17 41 F 53118 RECDPAY Check $1,434.48

32 63

94

Form 41B

SCHEDULE A

Page 2 of Return

ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SALES IN INTERSTATE COMMERCE

(TO BE USED BY PERSONS HAVING RECEIPTS FROM SALES IN INTERSTATE COMMERCE)

Item No.			
16.	Gross receipts from sales (Less: Sales returned)		$
17.	Less—Receipts from sales in foreign commerce (Less: Sales returned) (Explain in Schedule E)	$	
18.	Non-allocable and non-taxable receipts (Less: Sales returned) (Explain in Schedule E)		$
19.	Wholly taxable and allocable receipts (Item 16 minus Items 17 and 18)		$
20.	Less—Wholly taxable receipts (*Enter as Item 1, Page 1 of Return*)		$
21.	Allocable receipts (Receipts from sales in interstate commerce subject to allocation) (Item 19 minus Item 20)		$

IMPORTANT

Before proceeding further, answer the following questions:

(a) Is the taxpayer's entire real and tangible personal property located wholly within New York City?

(b) Are the wages, salaries and other personal service compensation paid during the basic period (measuring period) covered by return wholly applicable to employees who work in, or from, or are attached to, the taxpayer's place of business in New York City?

Answer "Yes" or "No"

If the answers to both questions are "Yes", then the information requested in Items 22 to 26, inclusive, need not be submitted and Schedule B need not be prepared. In such event, insert a percentage of 66-2/3% in the space provided under Item 27 and compute Item 28 as indicated thereunder.

Answer "Yes" or "No"

	Divide (a) by (b) to obtain percentage		
22.	(a) Average real and tangible personal property within New York City (Per Schedule B)	$	%
	(b) Average real and tangible personal property within the United States (Per Schedule B)	$	
23.	(a) Wages, salaries and other personal service compensation in New York City	$	%
	(b) Wages, salaries and other personal service compensation in the United States	$	
24.	(a) Wholly taxable receipts (Item 20) plus 1/3 of allocable receipts (1/3 of Item 21)	$	%
	(b) Wholly taxable and allocable receipts (Item 19)	$	
25.	Total percentages (Items 22 to 24, inclusive)		%
26.	Average percentage (Item 25 divided by three)		%
27.	Percentage to be used in computing allocated receipts subject to tax (Indicate below percentage applicable):		
	Average percentage, as per Item 26		
	If average percentage exceeds 66-2/3%, use 66-2/3%		%
	If average percentage is less than 33-1/3%, use 33-1/3%		
28.	Computation of allocated receipts subject to tax:		
	Allocable receipts (Item 21) multiplied by Item 27 (*Enter as Item 2, Page 1 of Return*)		$ 0

SCHEDULE B

AVERAGE VALUE OF REAL AND TANGIBLE PERSONAL PROPERTY EMPLOYED IN BUSINESS

	Description of Property	TOTAL Real and Tangible Personal Property Employed Within the United States	Real and Tangible Personal Property Employed Within the City of New York	Real and Tangible Personal Property Employed Within the United States But Without the City of New York	
				Amount	City or Town and State
29.	Real estate	$	$	$	
30.	Machinery				
31.	Motor vehicles and other delivery equipment				
32.	Merchandise inventory				
33.	Other tangible personal property				
34.	Total real and tangible personal property (Items 29 to 33, inclusive) (Enter as Item 22)	$	$	$	

ALTERNATIVE ALLOCATION FORMULA FOR MANUFACTURERS

If the taxpayer is a MANUFACTURER ENGAGED IN MANUFACTURING GOODS IN THE CITY OF NEW YORK for sale in interstate commerce, said taxpayer may, at his option, allocate the receipts from sales in interstate commerce on the basis of the cost of manufacturing and selling the goods sold in interstate commerce. A taxpayer who, at his option, elects to allocate the receipts from sales in interstate commerce under the alternative formula should prepare Schedule C, Page 3 of Return, and answer all questions indicated thereunder.

3/2

SCHEDULE C

MANUFACTURER'S ALTERNATIVE ALLOCATION FORMULA

(TO BE USED BY PERSONS ENGAGED IN MANUFACTURING GOODS IN THE CITY OF NEW YORK FOR SALE IN INTERSTATE COMMERCE)

Item No.		
35.	Gross receipts from sales (Less: Sales returned)	$
36.	Less—Receipts from sales in foreign commerce (Less: Sales returned) (Explain in Schedule E)	$
37.	Non-allocable and non-taxable receipts (Less: Sales returned) (Explain in Schedule E)	$
38.	Wholly taxable and allocable receipts (Item 35 minus Items 36 and 37)	$
39.	Less—Wholly taxable receipts (*Enter as Item 1, Page 1 of Return*)	$
40.	Allocable receipts (Receipts from sales in interstate commerce subject to allocation) (Item 38 minus Item 39)	$

IMPORTANT

A taxpayer may concede that the apportioned manufacturing and selling cost exceeds 66-2/3% of the allocable receipts. If it is so conceded, the information requested in Items 41 to 52, inclusive, need not be submitted. In such event, compute 66-2/3% of Item 40 and insert the resulting figure under Item 53. The amount of allocated receipts subject to tax is then to be computed as indicated by Item 54.

COMPUTATION OF ALLOCATION BASE

	Manufacturing and selling cost of all goods sold during basic period:	
41.	Materials and supplies consumed	$
42.	Factory and contractor labor	
43.	Factory overhead	
44.	Other expenses incurred in the manufacturing process	
45.	Shipping and delivery expenses (Including salaries and wages)	
46.	Advertising expense	
47.	Salesmen's salaries, commissions and traveling expenses	
48.	Other expenses incurred in selling or shipping the goods to customers	
49.	Total manufacturing and selling cost (Items 41 to 48, inclusive)	$
50.	Percentage which allocable receipts bear to gross receipts from sales (Item 40 divided by Item 35)	%
51.	Manufacturing and selling cost apportioned to allocable receipts (Item 49 multiplied by Item 50)	$
52.	Maximum placed on manufacturing and selling cost apportioned to allocable receipts—66-2/3% of allocable receipts (66-2/3% of Item 40)	$

COMPUTATION OF ALLOCATED RECEIPTS SUBJECT TO TAX

53.	Allocation base to be used in computing allocated receipts subject to tax (Item 51 or Item 52, whichever is lower)	$
54.	Allocated receipts subject to tax—50% of Item 53 (*Enter as Item 2, Page 1 of Return*)	$

A TAXPAYER USING THE MANUFACTURER'S ALTERNATIVE FORMULA (SCHEDULE C) MUST ANSWER THE FOLLOWING QUESTIONS

A. Describe the type of raw materials purchased for consumption in the manufacturing process

B. Are all such raw materials purchased in the name of the taxpayer?

C. Is the entire manufacturing process performed on the taxpayer's premises in New York City?

D. Is any part of the manufacturing process performed by a contractor?

E. Does the taxpayer maintain a factory, plant or warehouse outside New York City?

If answer is "Yes", state location and other pertinent details:

F. Describe fully the manufacturing process (or processes):

G. Describe the products manufactured:

H. Are all manufactured goods shipped to customers from the taxpayer's premises in New York City?

If answer is "No", state the various points from which shipments are made to customers:

(If more space is required, attach separate schedule)

3/3

SCHEDULE D

ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SERVICES (TRAFFIC) IN INTERSTATE COMMERCE

(TO BE USED BY PERSONS HAVING RECEIPTS FROM SERVICES (TRAFFIC) IN INTERSTATE COMMERCE WHERE MILEAGE IS EMPLOYED AS A BASIS IN DETERMINING THE RATES CHARGED FOR SERVICES RENDERED)

Item No.			
55.	Gross receipts (revenue) from passenger service	$	
56.	Gross receipts (revenue) from freight service		
57.	Gross receipts (revenue) from other traffic		
58.	Total (Items 55 to 57, inclusive)		$
59.	Less—Receipts in foreign commerce (Explain in Schedule E)	$	
60.	Non-allocable and non-taxable receipts (Explain in Schedule E)		$
61.	Wholly taxable and allocable receipts (Item 58 minus Items 59 and 60)		$
62.	Less—Wholly taxable receipts (*Enter as Item 3, Page 1 of Return*)		$
63.	Allocable receipts (Receipts from services in interstate commerce subject to allocation) (Item 61 minus Item 62)		$

64. **COMPUTATION OF ALLOCATED RECEIPTS SUBJECT TO TAX**

List Each Interstate Route Separately	Total Route Miles in the United States	Route Miles in New York State	Percentage to Be Used in Allocating Receipts	Revenue from Route: Allocable Receipts	Revenue from Route: Allocated Receipts Subject to Tax
			%	$	$
Enter total allocated receipts as Item 4, Page 1 of Return				$	$

(If more space is required, attach separate schedule)

SCHEDULE E

EXPLAIN HEREINBELOW THE DEDUCTIONS TAKEN AS ITEMS 17, 18, 36, 37, 59 AND 60, AND ANY OTHER ITEMS EXCLUDED FROM TAXABLE RECEIPTS ON PAGE 1 OF RETURN

Nature of Receipt	Reason for Deduction or Exclusion from Gross Receipts	Amount
		$
		$

THE FOLLOWING QUESTIONS MUST BE ANSWERED

I. State whether taxpayer is a corporation, co-partnership, individual proprietor, etc. Corporation

II. The books of the taxpayer are in the care of Taxpayer

Located at 27 State Street, New York City

III. Were returns filed under prior Business Tax laws? Yes If so, give name and address under which such returns were filed

If no returns were filed, state reasons therefor

IV. Is this business in any way an outgrowth, result, continuation or reorganization of a business previously in existence? No

If so, give details including the date of the change and the name and address of the predecessor business

V. Is the present business still in existence? Yes If not, give the exact date business activities terminated

Was the business legally dissolved? If so, give date of dissolution

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[fol. 95] John T. Clark & Sons, 17 State St., New York, N. Y.

June 14, 1941.

City Collector, Department of Finance, Room 100, Municipal Building, New York, New York

Dear Sir:

Enclosed herewith is my return of excise tax on gross receipts (Form 41 B) for the calendar year 1940, together with my check to your order in the amount of $1,434.48, in full payment of the tax shown due on the return. I wish to reserve my rights to recover all or any portion of such payment, and, accordingly, make such payment under protest and solely for the purpose of avoiding the imposition of any penalties and the waiver of any rights which I might otherwise have. In addition thereto the following grounds of protest are asserted.

1. Local Law 78 of 1940, under which said tax is assessed, is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States in that it purports to tax receipts of the taxpayer derived from sales in interstate and foreign commerce and thus constitutes a burden on interstate and foreign commerce.

2. Said local law is in violation of the Fourteenth Amendment to the Constitution of the United States and Article [fol. 96] I, Section 6 of the Constitution of the State of New York in that it deprives me of property without due process of law.

3. Said local law is invalid in that it delegates to the Comptroller of the City of New York power and authority to establish rules and regulations and/or methods of allocation and evaluation of receipts derived from transactions in interstate and foreign commerce.

4. Said local law is in violation of the Enabling Act, Laws of 1934, Chapter 873, as amended in that it purports to authorize the imposition of a tax on transactions originating and/or consummated outside of the territorial limits of the City of New York.

5. The rules and regulations and methods of allocation and evaluation adopted by the Comptroller of the City of New York in the Regulations promulgated by him as of

April 1, 1939, and said regulations as amended, purporting to be under and pursuant to said local law, are arbitrary, confiscatory and unreasonable, and are contrary to the provisions of said local law and operate to deprive me of property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York.

6. The Enabling Act, Laws of 1934, Chapter 873, as amended, purporting to grant authority to the City of New York to enact said local law is invalid and contrary to Article I, Section 8, Clause 3 and to the Fourteenth Amend-
[fol. 97] ment of the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York in that it purports to authorize the imposition of a tax based upon the gross receipts of a person doing business in the City of New York.

7. Moreover it is the taxpayer's contention that its income as stevedore is tax exempt as interstate or foreign commerce in accordance with Puget Sound Stevedoring Co. v. Tax Commission of State of Washington et al. ('37), 302 U. S. 90, 58 Sup. Ct. 72.

Very truly yours, —— ——.

(Here follow 4 Photolithographs, side folios 98, 98a, 98b, 98c)

Taxpayer's Exhibit 4 in Evidence

Form 426 4638-20443 114

Page 1 of Return

THE TAX DUE ON THIS RETURN IS PAYABLE ON JUNE 15, 1942.

NOTE—A taxpayer who began business after May 1, 1941, and is required to file a return for a basis period extending beyond May 1, 1942, may file such return on or before August 1, 1942, and pay the tax due at such time.

Mail this Return with Remittance to the City Collector On or Before the Due Date.

Such payments must be made only to the Cashier at the window. Such payments must be presented before 3 o'clock P.M., September 15 M. When payment is made the Cashier receipts thereto by a stamp in the space provided hereon.

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

90 LAFAYETTE STREET, NEW YORK CITY—WOrth 2-4700

GENERAL BUSINESS AND FINANCIAL TAX RETURN

(Return of Excise Tax on Gross Receipts Pursuant to Local Law No. 47 of 1941)

GROSS RECEIPTS FOR THE CALENDAR YEAR 1941

or Period Began ..... 19..... and Ended ..... 19.....

PRINT NAME, ADDRESS AND REGISTRATION OR FILE NUMBER

JOHN T CLARK & SON
17 STATE ST
NEW YORK N Y

B-142992

MAIL THIS COPY WITH CHECK

PAYEE'S EXHIBIT # 4

2/1/43 N2

Please correct any error in above imprint

FOR DEPARTMENTAL USE ONLY

I.
T.D. $
T.P.
B. $
6P
6UR
T. $
Checked by
B.C.
P.C.
B. No.
Billed by

KIND OF BUSINESS STEVEDORING
(Indicate clearly type of business, for example: Manufacturer—Ladies' Dresses; Wholesale Furniture; Automobile Service Station; etc.)

DATE BUSINESS COMMENCED MARCH 1910

Item No.	GROSS RECEIPTS				
1.	Wholly taxable receipts from sales in trade or business, less sales returns	$			
2.	Allocated receipts from sales in interstate commerce (Item 28—Schedule A or Item 54—Schedule C)				
3.	Wholly taxable receipts from trade or business of a service nature (Not from profession, vocation, etc.)		2	693 182	59
4.	Allocated receipts from transportation services in interstate commerce (Item 64—Schedule D)				
5.	Receipts from profession or vocation or personal services				
6.	Receipts from interest on bank deposits, notes, bonds, loans, etc.				
7.	Receipts from dividends on stocks of domestic and foreign corporations				
8.	Receipts from royalties, rentals of personal property, etc.				
9.	Receipts from premiums received by an insurance company from risks in New York City				
10.	Receipts from commissions earned as insurance agent, insurance broker or insurance underwriter				
11.	Other receipts from commercial activities (Attach schedule)				
12.	Total taxable receipts to be used as a measure in computing the tax, Items 1 to 11, inclusive	$	2	693 182	59
13.	Tax due the City of New York—1/20 of 1% of Item 12	$		1 346	59
14.	Penalties and/or interest				
15.	Total tax, penalties and/or interest, Item 13 plus Item 14	$		1 346	59

MAKE CHECK, DRAFT OR MONEY ORDER PAYABLE TO THE CITY COLLECTOR

AFFIDAVIT

I swear (or affirm) that this return of gross receipts, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 47 of 1941 and the regulations issued under authority thereof.

Sworn to and subscribed before me

this 12 day of January, 1942.

JOHN T. CLARK & SON
Name of Business or Taxpayer

NOTARY PUBLIC, Queens Co. Clk's No. 1262, Reg. No. 4H-2249
My commission expires March 30, 1942

Title

Cashier's Stamp

JAN 15 42 RECD PAY Check $1,346.59

22 95

LOCATION OF BOROUGH OFFICES OF THE CITY COLLECTOR

MANHATTAN ..... Room 160, Municipal Building
THE BRONX ..... Tremont and Arthur Avenues
BROOKLYN ..... Room 1, Municipal Building
QUEENS ..... Borough Hall, Kew Gardens
RICHMOND ..... Room 12, Borough Hall, St. George, S. I.

4/1.

98

Form 42B

SCHEDULE A

Page 2 of Return

ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM SALES IN INTERSTATE COMMERCE

(TO BE USED BY A TAXPAYER HAVING RECEIPTS FROM SALES IN INTERSTATE COMMERCE)

Item No.			
16.	Gross receipts from sales, less sales returns		$
17.	Deduct—Receipts from sales in foreign commerce, less sales returns (Explain in Schedule E)	$	
18.	Non-allocable and non-taxable receipts, less sales returns (Explain in Schedule E)		$
19.	Wholly taxable and allocable receipts (Item 16 minus Items 17 and 18)		$
20.	Deduct—Wholly taxable receipts. *Enter as Item 1, Page 1 of Return*		
21.	Allocable receipts (Receipts from sales in interstate commerce subject to allocation) (Item 19 minus Item 20)		$

IMPORTANT

Before proceeding further, answer the following questions:

(a) Is the taxpayer's entire real and tangible personal property located wholly within New York City? _____ Answer "Yes" or "No"

(b) Are the wages, salaries and other personal service compensation paid during the basic period (measuring period) covered by return wholly applicable to employees who work in, or from, or are attached to, the taxpayer's place of business in New York City? _____ Answer "Yes" or "No"

If the answers to both questions are "Yes," then the information requested in Items 22 to 26, inclusive, need not be submitted and Schedule B need not be prepared. In such event, insert a percentage of 66-2/3% in the space provided under Item 27 and compute Item 28 as indicated thereunder.

	Divide (a) by (b) to obtain percentage		
22.	(a) Average real and tangible personal property within New York City (Per Schedule B)	$	%
	(b) Average real and tangible personal property within the United States (Per Schedule B)	$	
23.	(a) Wages, salaries and other personal service compensation in New York City	$	%
	(b) Wages, salaries and other personal service compensation in the United States	$	
24.	(a) Wholly taxable receipts (Item 20) plus 1/3 of allocable receipts (1/3 of Item 21)	$	%
	(b) Wholly taxable and allocable receipts (Item 19)	$	
25.	Total percentages (Items 22 to 24, inclusive)		%
26.	Average percentage (Item 25 divided by three)		%

27. Percentage to be used in computing allocated receipts subject to tax. Indicate below the percentage applicable:

Average percentage, as computed in Item 26 above

If the average percentage computed as Item 26 is greater than 66-2/3%, use 66-2/3%

If the average percentage computed as Item 26 is less than 33-1/3%, use 33-1/3% — _____ %

28. Computation of allocated receipts subject to tax:

Allocable receipts (Item 21) multiplied by Item 27. *Enter as Item 2, Page 1 of Return* — $

SCHEDULE B

AVERAGE VALUE OF REAL AND TANGIBLE PERSONAL PROPERTY EMPLOYED IN BUSINESS

(TO BE USED ONLY BY A TAXPAYER COMPLETING ITEM 22)

	Description of Property	TOTAL Real and Tangible Personal Property Employed Within the United States	Real and Tangible Personal Property Employed Within the City of New York	Real and Tangible Personal Property Employed Within the United States But Without the City of New York	
				Amount	City or Town and State
29.	Real estate	$	$	$	
30.	Machinery, fixtures, etc.				
31.	Motor vehicles and other delivery equipment				
32.	Merchandise inventory				
33.	Other tangible personal property				
34.	Total real and tangible personal property (Items 29 to 33, inclusive). *Enter as Item 22*	$	$	$	

MANUFACTURER'S ALTERNATIVE ALLOCATION FORMULA

If the taxpayer is a manufacturer engaged in manufacturing goods in the City of New York, such taxpayer may, at his option, allocate the receipts from sales in interstate commerce on the basis of the cost of manufacturing and selling the goods sold in interstate commerce. A taxpayer who, at his option, elects to allocate the receipts from sales in interstate commerce under the alternative formula should prepare Schedule C, Page 3 of Return, and answer all questions indicated thereunder. Under such circumstances, Schedules A and B need not be prepared.

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Form 4SB

Page 3 of Return

SCHEDULE C

MANUFACTURER'S ALTERNATIVE ALLOCATION FORMULA

(TO BE USED ONLY BY A NEW YORK CITY MANUFACTURER WHEN MAKING AN ALLOCATION OF RECEIPTS FROM SALES IN INTERSTATE COMMERCE)

Item No.			
36.	Gross receipts from sales, less sales returns		$
5.	Deduct—Receipts from sales in foreign commerce, less sales returns (Explain in Schedule E)	$	
37.	Non-allocable and non-taxable receipts, less sales returns (Explain in Schedule E)		$
38.	Wholly taxable and allocable receipts (Item 33 minus Items 36 and 37)		$
39.	Deduct—Wholly taxable receipts. *Enter as Item 1, Page 1 of Return*		$
40.	Allocable receipts (Receipts from sales in interstate commerce subject to allocation) (Item 38 minus Item 39)		$

IMPORTANT

A taxpayer may contend that the apportioned manufacturing and selling cost exceeds 66-2/3% of the allocable receipts. If it is so contended, the information requested in Items 41 to 48, inclusive, need not be submitted. In such event, compute 66-2/3% of Item 40 and insert the resulting figure under Item 53. The amount of allocated receipts subject to tax is then to be computed as indicated by Item 54.

COMPUTATION OF ALLOCATION BASE

Manufacturing and selling cost of all goods sold during basic period:

41.	Materials and supplies consumed	$
42.	Factory and manufacturing labor	
43.	Factory overhead	
44.	Other expenses incurred in the manufacturing process	
45.	Advertising expense	
46.	Salesmen's salaries, commissions and traveling expenses	
47.	Shipping and delivery expenses, including salaries and wages	
48.	Other expenses incurred in selling or shipping the goods to customers	
49.	Total manufacturing and selling cost (Items 41 to 48, inclusive)	$
50.	Percentage which allocable receipts bear to gross receipts from sales (Item 40 divided by Item 36)	%
51.	Manufacturing and selling cost apportioned to allocable receipts (Item 49 multiplied by Item 50)	$
52.	Maximum placed on manufacturing and selling cost apportioned to allocable receipts—66-2/3% of allocable receipts (66-2/3% of Item 40)	$

COMPUTATION OF ALLOCATED RECEIPTS SUBJECT TO TAX

53.	Allocation base to be used in computing allocated receipts subject to tax (Item 51 or Item 52, whichever is lower)	$
54.	Allocated receipts subject to tax—30% of Item 53. *Enter as Item 2, Page 1 of Return*	$

A TAXPAYER USING THE MANUFACTURER'S ALTERNATIVE FORMULA (SCHEDULE C) MUST ANSWER THE FOLLOWING QUESTIONS

A. Describe the type of raw materials purchased for consumption in the manufacturing process:

B. Are all such raw materials purchased in the name of the taxpayer?

C. Is the entire manufacturing process performed on the taxpayer's premises in New York City?

D. Is any part of the manufacturing process performed by a contractor?

E. Does the taxpayer maintain a factory, plant or warehouse outside New York City?

If answer is "Yes," state location and other pertinent details:

F. Describe fully the manufacturing process (or processes):

G. Describe the product(s) manufactured:

H. Are all manufactured goods shipped to customers from the taxpayer's premises in New York City?

If answer is "No," state the various points from which shipments are made to customers:

(If more space is required, attach separate schedule)

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98b

Form 428 — Page 4 of Return

SCHEDULE D

ALLOCATION AND APPORTIONMENT OF RECEIPTS FROM TRANSPORTATION SERVICES IN INTERSTATE COMMERCE

(TO BE USED BY A TAXPAYER HAVING RECEIPTS FROM TRANSPORTATION SERVICES IN INTERSTATE COMMERCE WHERE MILEAGE IS A FACTOR IN DETERMINING THE RATES CHARGED FOR SERVICES RENDERED. SCHEDULE D DOES NOT APPLY TO A PERSON SUBJECT TO THE NEW YORK CITY UTILITY TAX LAW)

Item No.		
55.	Gross receipts (revenue) from passenger service	$
56.	Gross receipts (revenue) from freight service	
57.	Gross receipts (revenue) from other traffic	
58.	Total (Items 55 to 57, inclusive)	$
59.	Deduct—Receipts in foreign commerce (Explain in Schedule E)	$
60.	Non-allocable and non-taxable receipts (Explain in Schedule E)	$
61.	Wholly taxable and allocable receipts (Item 58 minus Items 59 and 60)	$
62.	Deduct—Wholly taxable receipts. *Enter as Item 3, Page 1 of Return*	$
63.	Allocable receipts (Receipts from traffic in interstate commerce subject to allocation) (Item 61 minus Item 62)	$

64. **COMPUTATION OF ALLOCATED RECEIPTS SUBJECT TO TAX**

List Each Interstate Route Separately	Total Route Miles in the United States	Route Miles in New York State	Percentage to Be Used in Allocating Receipts	Revenue from Route: Allocable Receipts	Revenue from Route: Allocated Receipts Subject to Tax
			%	$	$

Enter total allocated receipts as Item 4, Page 1 of Return — $

(If more space is required, attach separate schedule)

SCHEDULE E

EXPLAIN HEREINBELOW THE DEDUCTIONS TAKEN AS ITEMS 17, 18, 38, 39, 39 AND 60. ALL ITEMS EXCLUDED FROM TAXABLE RECEIPTS ON PAGE 1 OF RETURN MUST ALSO BE EXPLAINED IN THIS SCHEDULE

Nature of Receipt	Reason for Deduction or Exclusion from Gross Receipts	Amount
		$
		$

THE FOLLOWING QUESTIONS MUST BE ANSWERED

I. State whether taxpayer is a corporation, partnership, individual proprietor, etc. CORPORATION

II. The books of the taxpayer are in the care of TAXPAYER

Located at 17 STATE STREET, N. Y. C.

III. Were General Business and Financial Tax Returns filed for prior years? YES

If not, state reason.

If returns for prior years were filed under any other name or address, give name and address used on such returns SAME

IV. Is this business in any way an outgrowth, result, continuation or reorganization of a business previously in existence? NO

If so, give details including the date of the change and the name and address of the predecessor business

V. Is the present business still in existence? YES If not, give the exact date business activities terminated

Was the business legally dissolved? If so, give date of dissolution

VI. Were returns filed under the New York City Sales and Compensating Use Tax Laws? NO

If not, state reason NOT SUBJECT

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[fol. 99] John T. Clark & Son, 17 State St., New York, New York

June 12, 1942.

City Collector, Department of Finance, Room 100—Municipal Building, New York, New York.

Dear Sir:

Enclosed herewith is our return of excise tax on gross receipts (Form 42B) for the calendar year 1941, together with our check to your order in the amount of $1,346.59, in full payment of the tax shown due on the return. We wish to reserve our rights to recover all or any portion of such payment, and, accordingly, make such payment under protest and solely for the purpose of avoiding the imposition of any penalties and the waiver of any rights which we might otherwise have. In addition thereto the following grounds of protest are asserted:

1. Local Law 47 of 1941, under which said tax is assessed, is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States in that it purports to tax receipts of the taxpayer derived from sales in interstate and foreign commerce and thus constitutes a burden on interstate and foreign commerce.

2. Said local law is in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York in [fol. 100] that it deprives us of property without due process of law.

3. Said local law is invalid in that it delegates to the Comptroller of the City of New York power and authority to establish rules and regulations and/or methods of allocation and evaluation of receipts derived from transactions in interstate and foreign commerce.

4. Said local law is in violation of the Enabling Act, Laws of 1934, Chapter 873, as amended, in that it purports to authorize the imposition of a tax on transactions originating and/or consummated outside of the territorial limits of the City of New York.

5. The rules and regulations and methods of allocation and evaluation adopted by the Comptroller of the City of

New York in the Regulations promulgated by him as of April 1, 1939, and said regulations as amended, purporting to be under and pursuant to said local law, are arbitrary, confiscatory and unreasonable, and are contrary to the provisions of said local law and operate to deprive us of property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Section 6 of the Constitution of the State of New York.

6. The Enabling Act, Laws of 1934, Chapter 873, as amended, purporting to grant authority to the City of New York to enact said local law is invalid and contrary to Article I, Section 8, Clause 3 and to the Fourteenth Amendment of the Constitution of the United States and Article I, Sec- [fol. 101] tion 6 of the Constitution of the State of New York in that it purports to authorize the imposition of a tax based upon the gross receipts of a person doing business in the City of New York.

7. Moreover it is the taxpayer's contention that its income as stevedore is tax-exempt as interstate or foreign commerce in accordance with *Puget Sound Stevedoring Co.* v. *Tax Commission of State of Washington et al.* ('37), 302 U. S. 90, 58 Sup. Ct. 72.

Very truly yours, John T. Clark & Son, by Wm. H. Clark.

[fol. 102] TAXPAYER'S EXHIBIT 5 IN EVIDENCE

(Stamp:) Received. Comptroller's Office, Chief Clerk, Jun. 12, 9:46 A. M. '42

[Letterhead of]

Baldwin, Todd & Young

June 11, 1942.

Comptroller of The City of New York, Municipal Building, New York, New York.

John T. Clark & Son, Applications for Refund of Excise Tax on Gross Receipts for the Years 1938, 1939 and 1940

DEAR SIR:

On behalf of our client, the above named corporation, we enclose herewith the following:

(1) Application for refund of excise tax on gross receipts for the calendar year 1938 in the sum of $879.94, together with interest of $105.59, or a total of $985.53.

(2) Application for refund of excise tax on gross receipts for the calendar year 1939 in the sum of $1,109.22, together with interest of $66.55, or a total of $1,175.77.

(3) Application for refund of excise tax on gross receipts for the calendar year 1940 in the sum of $1,434.48.

[fol. 103] In each case there is attached to the application the cancelled check of the corporation used in paying the tax and interest.

You will note that a hearing is requested.

Will you please acknowledge receipt of this letter and of the enclosed applications by signing and returning the copy of this letter which is enclosed for that purpose.

Very truly yours, Baldwin, Todd & Young.

JHA:LW.

7 Enclosures: 3 Applications for Refund of Tax, each with cancelled check attached. 1 Copy of this letter.

[fol. 104] Application by John T. Clark & Son to the Comptroller of the City of New York for Refund of Excise Tax on Gross Receipts for the Calendar Year 1938 and Interest Thereon

John T. Clark & Son hereby applies for refund of excise tax on gross receipts paid by it for the calendar year 1938 and of the interest thereon, and in support of said application sets forth the following:

1. John T. Clark & Son is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office or place of business at 17 State Street, New York, New York.

2. On or about June 16, 1941 John T. Clark & Son pursuant to New York City Local Law 20 of 1938 filed with the Collector of the City of New York a return of excise tax on gross receipts (Form 39B) for the calendar year 1938. Said return purported to show a tax due in the amount of $879.94, with interest thereon from June 15, 1939 to June 15, 1941 in the amount of $105.59, or a total tax and interest due of $985.53. Said return was filed under protest and duress and to avoid the imposition of penalties. The protest was in writing dated June 14, 1941, was attached to said return, and stated in detail the grounds of the protest. Payment of the tax was made at the time of filing the return. There is attached hereto the cancelled check of John. T. Clark & Son dated June 16, 1941 payable to the order of the City Collector, City of New York, in the amount of $985.53, used in making payment of such tax and interest.

[fol. 105] 3. On information and belief, said tax in the amount of $879.94 and said interest in the amount of $105.59 were erroneously, illegally or unconstitutionally collected and should be refunded for the following reasons:

(a) John T. Clark & Son is, and for many years prior to and including the year 1938 has been, engaged in the general stevedoring business. The business consists of the loading and/or unloading of ships and other vessels engaged exclusively in commerce between the United States and foreign countries and the entire gross receipts upon which said tax was exacted and paid were payments received for such loading and/or unloading. Such business of loading and/or unloading constitutes foreign commerce and the City of New York is without power to tax the privilege of doing it

by exacting in return therefor a percentage of the gross receipts derived therefrom.

(b) Part of the gross receipts with respect to which the tax was paid were received for loading and/or unloading ships and other vessels in harbors other than harbors of New York State and said part of such gross receipts were therefore received for the performance of acts outside of the territorial limits and jurisdiction of New York State and New York City.

(c) Part of the gross receipts with respect to which the tax was paid were received for the performance of acts on ships and other vessels and/or structures not subject to the jurisdiction of the State of New York or the City of New York.

(d) Said Local Law 20 of 1938 does not authorize the im-[fol. 106] position on John T. Clark & Son of a tax for the privilege of carrying on its business nor does it require John T. Clark & Son to include in gross receipts used as the measure of said tax any or all of its receipts from said business.

(e) If Local Law 20 of 1938 does authorize the imposition of a tax on John T. Clark & Son for the privilege of engaging in its business it is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, the Fourteenth Amendment to said Constitution, Article I, Section 6 of the Constitution of the State of New York, and the Enabling Act, New York Laws of 1934, Chapter 873, as amended.

(f) If the Enabling Act, New York Laws of 1934, Chapter 873, as amended, purports to grant authority to the City of New York to enact legislation authorizing the imposition of a tax upon John T. Clark & Son for the privilege of carrying on its business, said Act is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, and of the Fourteenth Amendment to said Constitution and of Article I, Section 6 of the Constitution of the State of New York.

No hearing has been heretofore had with respect to the matters set forth herein and application is hereby made for a hearing.

John T. Clark & Son, by Wm. H. Clark, Pres.

[fol. 107] STATE OF NEW YORK,
County of New York, ss:

Wm. H. Clark, being duly sworn, says:

That he is President of John T. Clark & Son, the applicant above named, a corporation organized and existing under the laws of the State of New York, and that he has read the foregoing refund claim and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be made upon information and belief, and that as to those matters he believes it to be true.

Wm. H. Clark, Pres.

Sworn to before me this 11th day of June, 1942.
Stanley Oliver, Notary Public, New York County. N. Y. Co. Clk's No. 24, Reg. No. 4-O-54. Kings Co. Clk's No. 41, Reg. No. 4051. Bronx Co. Clk's No. 5, Reg. No. 32-O-44. Queens Co. Clk's No. 444, Reg. No. 2243. Certificate filed in Richmond Co. Commission expires March 30, 1944. (Seal.)

[fol. 108] Application by John T. Clark & Son to the Comptroller of the City of New York for Refund of Excise Tax on Gross Receipts for the Calendar Year 1939 and Interest Thereon

John T. Clark & Son hereby applies for refund of excise tax on gross receipts paid by it for the calendar year 1939 and of the interest thereon, and in support of said application sets forth the following:

1. John T. Clark & Son is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office or place of business at 17 State Street, New York, New York.

2. On or about June 16, 1941 John T. Clark & Son pursuant to New York City Local Law 103 of 1939 filed with the Collector of the City of New York a return of excise tax on gross receipts (Form 40B) for the calendar year 1939. Said return purported to show a tax due in the amount of $1,109.22, with interest thereon from June 15, 1940 to June 15, 1941 in the amount of $66.55, or a total tax and interest due of $1,175.77. Said return was filed under protest and duress and to avoid the imposition of penalties. The pro-

test was in writing dated June 14, 1941, was attached to said return and stated in detail the grounds of the protest. Payment of the tax was made at the time of filing the return. There is attached hereto the cancelled check of John T. Clark & Son dated June 16, 1941 payable to the order of the City Collector, City of New York, in the amount of $1,175.77, [fol. 109] used in making payment of such tax and interest.

3. On information and belief, said tax in the amount of $1,109.22 and said interest in the amount of $66.55 were erroneously, illegally or unconstitutionally collected and should be refunded for the following reasons:

(a) John T. Clark & Son is, and for many years prior to and including the year 1939 has been, engaged in the general stevedoring business. The business consists of the loading and/or unloading of ships and other vessels engaged exclusively in commerce between the United States and foreign countries and the entire gross receipts upon which said tax was exacted and paid were payments received for such loading and/or unloading. Such business of loading and/or unloading constitutes foreign commerce and the City of New York is without power to tax the privilege of doing it by exacting in return therefor a percentage of the gross receipts derived therefrom.

(b) Part of the gross receipts with respect to which the tax was paid were received for loading and/or unloading ships and other vessels in harbors other than harbors of New York State and said part of such gross receipts were therefore received for the performance of acts outside of the territorial limits and jurisdiction of New York State and New York City.

(c) Part of the gross receipts with respect to which the tax was paid were received for the performance of acts on [fol. 110] ships and other vessels and/or structures not subject to the jurisdiction of the State of New York or the City of New York.

(d) Said Local Law 103 of 1939 does not authorize the imposition on John T. Clark & Son of a tax for the privilege of carrying on its business nor does it require John T. Clark & Son to include in gross receipts used as the measure of said tax any or all of its receipts from said business.

(e) If Local Law 103 of 1939 does authorize the imposition of a tax on John T. Clark & Son for the privilege of

engaging in its business it is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, the Fourteenth Amendment to said Constitution, Article I, Section 6 of the Constitution of the State of New York, and the Enabling Act, New York Laws of 1934, Chapter 873, as amended.

(f) If the Enabling Act, New York Laws of 1934, Chapter 873, as amended, purports to grant authority to the City of New York to enact legislation authorizing the imposition of a tax upon John T. Clark & Son for the privilege of carrying on its business, said Act is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, and of the Fourteenth Amendment to said Constitution, and of Article I, Section 6 of the Constitution of the State of New York.

No hearing has been heretofore had with respect to the matters set forth herein and application is hereby made for a hearing.

John T. Clark & Son, by Wm. H. Clark, Pres.

[fol. 111] STATE OF NEW YORK,
County of New York, ss:

WM. H. CLARK, being duly sworn, says:

That he is President of John T. Clark & Son, the applicant above named, a corporation organized and existing under the laws of the State of New York, and that he has read the foregoing refund claim and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be made upon information and belief, and that as to those matters he believes it to be true.

Wm. H. Clark, Pres.

Sworn to before me this 11th day of June, 1942.

Stanley Oliver, Notary Public, New York County. N. Y. Co. Clk's No. 24, Reg. No. 4-O-54. Kings Co. Clk's No. 41, Reg. No. 4051. Bronx Co. Clk's No. 5, Reg. No. 32-O-44. Queens Co. Clk's No. 444, Reg. No. 2243. Certificate filed in Richmond Co. Commission expires March 30, 1944. (Seal.)

[fol. 112] APPLICATION BY JOHN T. CLARK & SON TO THE COMPTROLLER OF THE CITY OF NEW YORK FOR REFUND OF EXCISE TAX ON GROSS RECEIPTS FOR THE CALENDAR YEAR 1940.

John T. Clark & Son hereby applies for refund of excise tax on gross receipts paid by it for the calendar year 1940 and in support of said application sets forth the following:

1. John T. Clark & Son is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office or place of business at 17 State Street, New York, New York.

2. On or about June 16, 1941 John T. Clark & Son pursuant to New York City Local Law 78 of 1940 filed with the Collector of the City of New York a return of excise tax on gross receipts (Form 41B) for the calendar year 1940. Said return purported to show a tax due in the amount of $1,434.48. Said return was filed under protest and duress and to avoid the imposition of penalties. The protest was in writing dated June 14, 1941, was attached to said return, and stated in detail the grounds of the protest. Payment of the tax was made at the time of filing the return. There is attached hereto the cancelled check of John T. Clark & Son dated June 16, 1941 payable to the order of the City Collector, City of New York, in the amount of $1,434.48, used in making payment of such tax.

3. On information and belief, said tax in the amount of $1,434.48 was erroneously, illegally or unconstitutionally collected and should be refunded for the following reasons:

[fol. 113] (a) John T. Clark & Son is, and for many years prior to and including the year 1940 has been, engaged in the general stevedoring business. The business consists of the loading and/or unloading of ships and other vessels engaged exclusively in commerce between the United States and foreign countries and the entire gross receipts upon which said tax was exacted and paid were payments received for such loading and/or unloading. Such business of loading and/or unloading constitutes foreign commerce and the City of New York is without power to tax the privilege of doing it by exacting in return therefor a percentage of the gross receipts derived therefrom.

(b) Part of the gross receipts with respect to which the tax was paid were received for loading and/or unloading ships and other vessels in harbors other than harbors of New York State and said part of such gross receipts were therefore received for the performance of acts outside of the territorial limits and jurisdiction of New York State and New York City.

(c) Part of the gross receipts with respect to which the tax was paid were received for the performance of acts on ships and other vessels and/or structures not subject to the jurisdiction of the State of New York or the City of New York.

(d) Said Local Law 78 of 1940 does not authorize the imposition on John T. Clark & Son of a tax for the privilege of carrying on its business nor does it require John T. Clark & Son to include in gross receipts used as the measure [fol. 114] of said tax any or all of its receipts from said business.

(e) If Local Law 78 of 1940 does authorize the imposition of a tax on John T. Clark & Son for the privilege of engaging in its business it is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, the Fourteenth Amendment to said Constitution, Article I, Section 6 of the Constitution of the State of New York, and the Enabling Act, New York Laws of 1934, Chapter 873, as amended.

(f) If the Enabling Act, New York Laws of 1934, Chapter 873, as amended, purports to grant authority to the City of New York to enact legislation authorizing the imposition of a tax upon John T. Clark & Son for the privilege of carrying on its business, said Act is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, and of the Fourteenth Amendment to said Constitution, and of Article I, Section 6 of the Constitution of the State of New York.

No hearing has been heretofore had with respect to the matters set forth herein and application is hereby made for a hearing.

John T. Clark & Son, by Wm. H. Clark, Pres.

[fol. 115] STATE OF NEW YORK,
County of New York, ss:

WM. H. CLARK, being duly sworn, says:

That he is President of John T. Clark & Son, the applicant above named, a corporation organized and existing under the laws of the State of New York, and that he has read the foregoing refund claim and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be made upon information and belief, and that as to those matters he believes it to be true.

Wm. H. Clark, Pres.

Sworn to before me this 11th day of June, 1942. Stanley Oliver, Notary Public, New York County. N. Y. Co. Clk's No. 24, Reg. No. 4-O-54. Kings Co. Clk's No. 41, Reg. No. 4051. Bronx Co. Clk's No. 5, Reg. No. 32-O-44. Queens Co. Clk's No. 444, Reg. No. 2243. Certificate filed in Richmond Co. Commission expires March 30, 1944. (Seal.)

[fol. 116] TAXPAYER'S EXHIBIT 6 IN EVIDENCE

(Letterhead of)
Baldwin, Todd & Young

November 7, 1942.

Comptroller of The City of New York, Municipal Building, New York, New York.

John T. Clark & Son

Application for refund of excise tax on gross receipts for the calendar year 1941

DEAR SIR:

In behalf of our client, the above named corporation, we enclose herewith application for refund of excise tax on gross receipts for the calendar year 1941 in the sum of $1,346.59. There is attached to the application the cancelled check of the corporation used in paying the tax.

Will you please acknowledge receipt of this letter and of the enclosed application by signing and returning the copy of this letter which is enclosed for that purpose.

Very truly yours, Baldwin, Todd & Young.

BA:LW 3 enclosures: Application, Cancelled Check, Copy of this letter

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[fol. 117] APPLICATION BY JOHN T. CLARK & SON TO THE COMPTROLLER OF THE CITY OF NEW YORK FOR REFUND OF EXCISE TAX ON GROSS RECEIPTS FOR THE CALENDAR YEAR 1941.

John T. Clark & Son hereby applies for refund of excise tax on gross receipts paid by it for the calendar year 1941 and in support of said application sets forth the following:

1. John T. Clark & Son is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office or place of business at 17 State Street, New York, New York.

2. On or about June 12, 1942 John T. Clark & Son pursuant to New York City Local Law 47 of 1941 filed with the Collector of the City of New York a return of excise tax on gross receipts (Form 42-B) for the calendar year 1941. Said return purported to show a tax due in the amount of $1,346.59. Said return was filed under protest and duress and to avoid the imposition of penalties. The protest was in writing dated June 12, 1942, was attached to said return, and stated in detail the grounds of the protest. Payment of the tax was made at the time of filing the return. There is attached hereto the cancelled check of John T. Clark & Son dated June 12, 1942, payable to the order of the City Collector in the amount of $1,346.59, used in making payment of such tax.

3. On information and belief, said tax in the amount of $1,346.59 was erroneously, illegally or unconstitutionally collected and should be refunded for the following reasons:

[fol. 118] (a) John T. Clark & Son is, and for many years prior to and including the year 1941 has been, engaged in the general stevedoring business. The business consists of the loading and/or unloading of ships and other vessels

engaged exclusively in commerce between the United States and foreign countries and the entire gross receipts upon which said tax was exacted and paid were payments received for such loading and/or unloading. Such business of loading and/or unloading constitutes foreign commerce and the City of New York is without power to tax the privilege of doing it by exacting in return therefor a percentage of the gross receipts derived therefrom.

(b) Part of the gross receipts with respect to which the tax was paid were received for loading and/or unloading ships and other vessels in harbors other than harbors of New York State and said part of such gross receipts were therefore received for the performance of acts outside of the territorial limits and jurisdiction of New York State and New York City.

(c) Part of the gross receipts with respect to which the tax was paid were received for the performance of acts on ships and other vessels and/or structures not subject to the jurisdiction of the State of New York or the City of New York.

(d) Said Local Law 47 of 1941 does not authorize the imposition on John T. Clark & Son of a tax for the privilege of carrying on its business nor does it require John T. Clark & Son to include in gross receipts used as the meas- [fol. 119] ure of said tax any or all of its receipts from said business.

(e) If Local Law 47 of 1941 does authorize the imposition of a tax on John T. Clark & Son for the privilege of engaging in its business it is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, the Fourteenth Amendment to said Constitution, Article I, Section 6 of the Constitution of the State of New York, and the Enabling Act, New York Laws of 1941, Chapter 199.

(f) If the Enabling Act, New York Laws of 1941, Chapter 199, purports to grant authority to the City of New York to enact legislation authorizing the imposition of a tax upon John T. Clark & Son for the privilege of carrying on its business, said Act is in violation of Article I, Section 8, Clause 3 of the Constitution of the United States, and of the Fourteenth Amendment to said Constitution, and of Article I, Section 6 of the Constitution of the State of New York.

No hearing has been heretofore had with respect to the matters set forth herein and application is hereby made for a hearing.

John T. Clark & Son, by Wm. H. Clark, Pres.

[fols. 120-121] STATE OF NEW YORK,
County of New York, ss:

W. H. Clark, being duly sworn, says:

That he is President of John T. Clark & Son, the applicant above named, a corporation organized and existing under the laws of the State of New York, and that he has read the foregoing refund claim and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be made upon information and belief, and that as to those matters he believes it to be true.

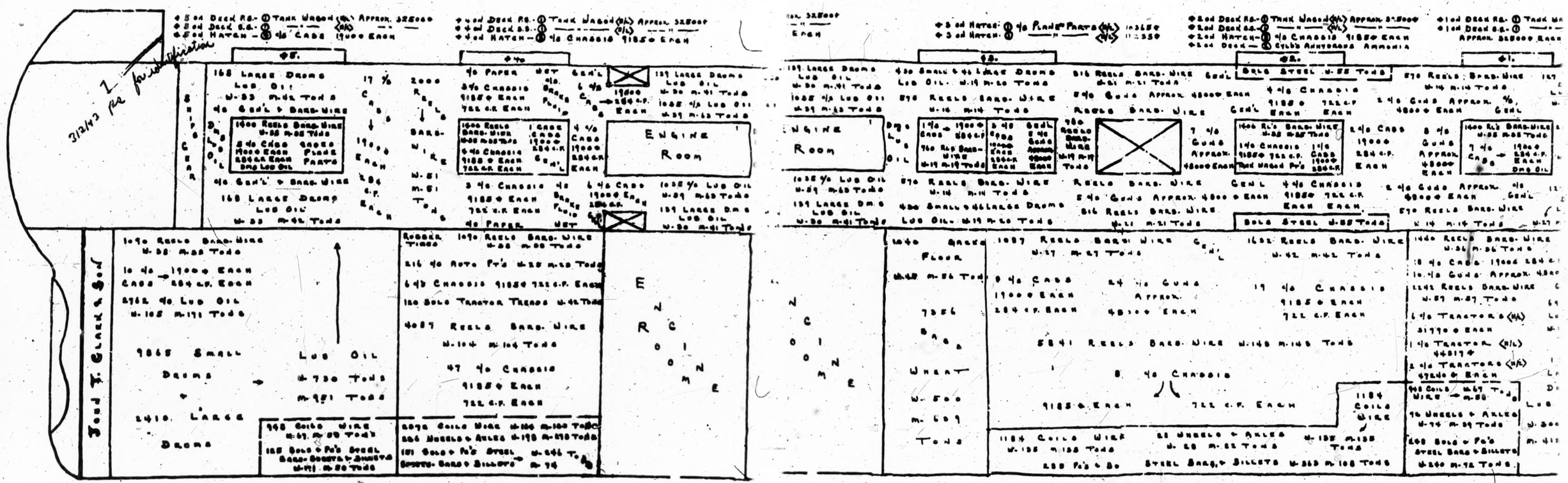
Wm. H. Clark.

Sworn to before me this 5th day of November, 1942. Stanley Oliver, Notary Public, New York County. N. Y. Co. Clk's No. 24, Reg. No. 4-O-54. Kings Co. Clk's No. 24, Reg. No. 4051. Bronx Co. Clk's No. 5, Reg. No. 32-O-44. Queens Co. Clk's No. 444, Reg. No. 2243. Certificate filed in Richmond Co. Commission expires March 30, 1944. (Seal.)

(Here follows 1 photolithograph, side folio 122)

Taxpayer's E

Taxpayer's Exhibit 7 in Evidence


#5.
#4.
#3.
#2.
#1.
Engine Room
Engine Room
Boiler Room
Boiler Room
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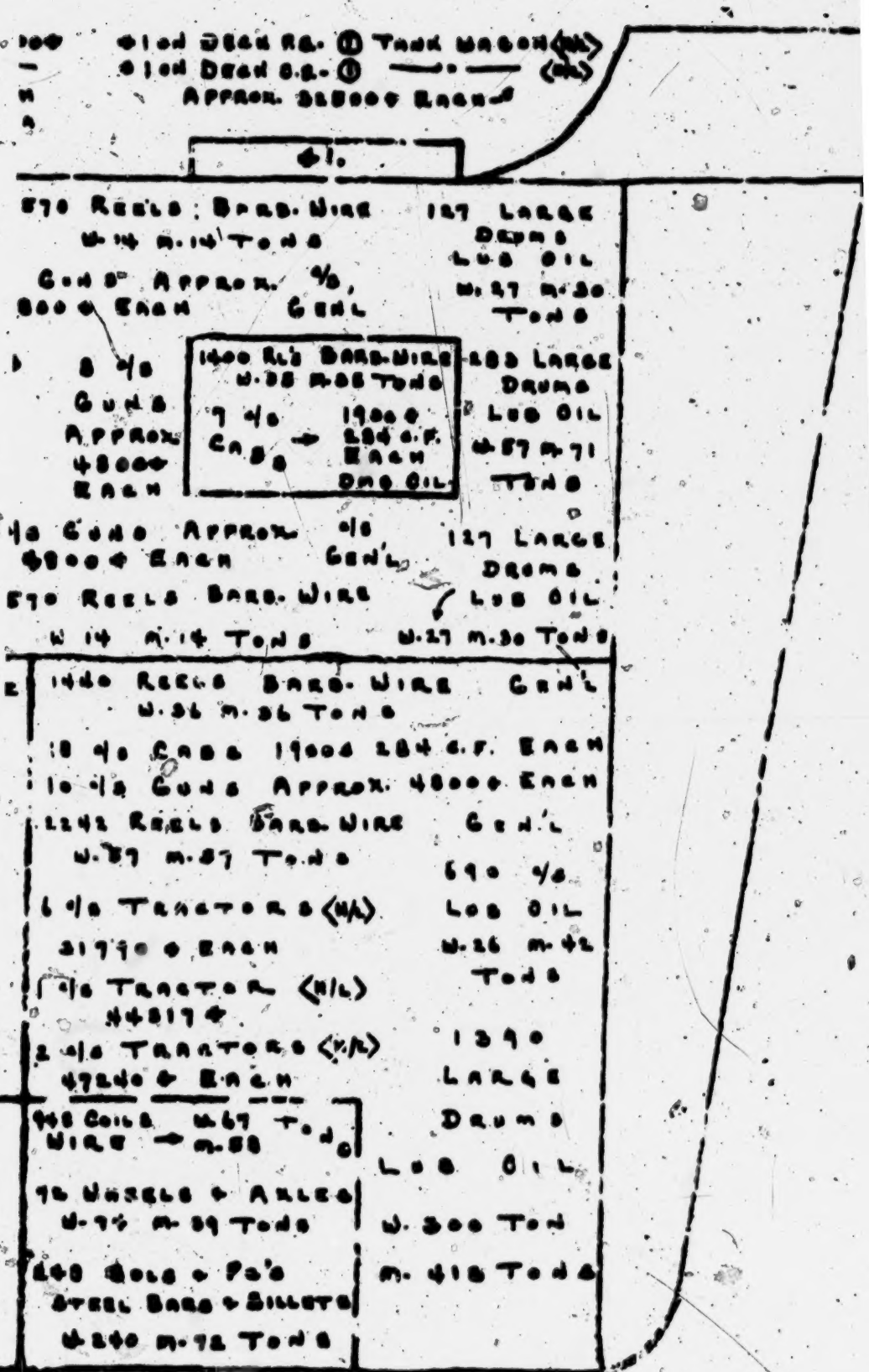
Engine Room
Engine


100 — M A
#1 on Deck Rd. (1) Tank Wagon (W.)
#1 on Deck S.B. (1) (W.)
Approx. 35000 Each
#1.
570 Reels Barb. Wire
W. 14 M. 14 Tons
Gen'l Approx. 1/3, 800 # Each
8 #/s Guns Approx 48000 Each
1400 Rls Barb-Wire W. 28 M. 28 Tons
7 #/s Cases → 19000 284 C.F. Each
Dmg Oil
127 Large Drums Lub Oil W. 27 M. 30 Tons
283 Large Drums Lub Oil W. 57 M. 71 Tons
#/s Guns Approx 48000 Each
1/3 Gen'l
570 Reels Barb. Wire
W. 14 M. 14 Tons
127 Large Drums Lub Oil W. 27 M. 30 Tons
1440 Reels Barb. Wire Gen'l W. 36 M. 36 Tons
18 #/s Cases 19000 284 C.F. Each
10 #/s Guns Approx 48000 Each
1242 Reels Barb. Wire Gen'l W. 31 M. 31 Tons
690 #/s
6 #/s Tractors (W.) 21990 Each
Lub Oil W. 26 M. 42 Tons
1 #/s Tractor (W.L.) 44814
2 #/s Tractors (W.L.) 47240 Each
1390 Large Drums Lub Oil
948 Coils Wire → W. 67 Tons M. 58
78 Wheels & Axles W. 99 M. 39 Tons
W. 300 Tons
268 Rods & Pc's Steel Bars & Billets W. 240 M. 92 Tons
M. 418 Tons

[fol. 123] TAXPAYER'S EXHIBIT 8 FOR IDENTIFICATION

Cunard White Star Ltd.

Memorandum of Agreement entered into this 29th day of January 1940 by and between John T. Clark and Son Contractor and Cunard White Star S/S Company, Ltd. Owners, Agents, or Charterers.

In consideration of the payment of the rates designated below, but subject to the terms herein mentioned, the Contractor agrees to stevedore the vessel(s) of the above named Owners, Agents, or Charterers, and perform such other services as may be stated at Pier 84 and 86, North River for

Passenger Ships:—

Discharging General Cargo (Passenger Ships) 2.25 pr. payable ton.

Discharging Baggage at cost plus insurance and S. S. Tax—plus 10%.

Discharging Mail at cost plus insurance and S. S. Tax—plus 10%.

Discharging Specie at cost plus insurance and S. S. Tax—plus 10%.

Discharging Passenger Autos at cost plus insurance and S. S. Tax—plus 10%.

Opening & Closing Hatches (Rigging) cost plus insurance and S. S. Tax.

Discharging Tramp Steamers at the Port of New York.

Discharging & Loading General Cargo (per payable ton) 1.798 per ton.

Extra Labor Men—Day 1.32 per hour plus 10%.

Extra Labor Hatch Fore. 1.50 per hour plus 10%.

[fol. 124] Extra Labor Head Fore. 1.96 per hour plus 10%.

Extra Labor Timekeeper 1.09 per hour plus 10%.

Extra Labor Overtime Men 1.98 per hour plus 10%.

Extra Labor Hatch Fore. 2.22 per hour plus 10%.

Extra Labor Head Fore. 2.93 per hour plus 10%.

Extra Labor Timekeeper 1.65 per hour plus 10%.

Overtime:—

Men	.66 per hour
Hatch Fore.	.72 per hour
Head Fore.	.96 per hour

Overtime:—

Timekeeper	.61 per hour
Gear Man	.66 per hour
Plan Clerk	.61 per hour

1. Equipment. The Contractor will provide stevedore gear for the stevedoring of the cargoes. The ship is to supply winches and sufficient steam or current for their efficient operation; dunnage; wire or rope for falls and slings; hatch tents; light for night work; tugs; coal hoisters; derricks or cranes for such heavy lifts as exceed the capacity of the ship's gear, and hoisters or cranes in lieu of ship's winches. In the case of grain cargoes the ship is to supply bags, separation cloths and dunnage boards whenever necessary; when requested, the Contractor will supply such material at current rates.

2. Increase or Decrease in Wages. All rates quoted are based on and subject to the prevailing wage scale and working conditions in the port of loading or discharging. In the event of an increase or decrease in such wage scale or change in working conditions, the rate will as a consequence be proportionately increased or decreased.

[fol. 125] 3. Strikes. In the event of strikes, lockouts, or other labor difficulties the Contractor will, if able to work, do so upon a basis of cost, plus 10% and insurance, in lieu of rates quoted, unless notified by the Owners, Agents or Charterers that no work is to be performed.

4. Insurance. The rates quoted are inclusive of insurance. The Contractor agrees to carry Workmen's Compensation Insurance for the protection of its employees and Public Liability Insurance for the protection of third parties injured by its employees.

5. Responsibility for Damage or Loss. The Contractor will be responsible for damage or loss to cargo through its negligence to the same extent as the Owners, Agents, or Charterers are responsible for such damage or loss to third parties. When damage or loss occurs to Cargo or Ship's equipment by reason of such negligence, the ship's officers or other authorized representative will call this to the attention of the Contractor and the responsibility fixed at that time insofar as it may be possible to do so.

6. Overtime, Meal Hours, Traveling Time and Transportation. Overtime and meal hours, when worked, will be charged for upon the basis of the rates provided in the prevailing wage scale of the port, plus insurance. When men are employed to work outside the Harbor limits and travel time is required to be paid the men, in accordance with the wage scale, such travel time will be charged for at cost, plus insurance. When vessels are worked in the stream or other places where means of transportation for the men are required, any expense incurred will be charged for at cost.

[fol. 126] 7. Detentions, Waiting or Lay Time. When men are employed and detention in excess of 15 minutes occur, or when men are employed and unable to work through causes beyond the contractor's control, or when men are to be paid for a minimum working period in accordance with the wage agreement, the cost for such time will be charged for at cost plus insurance.

8. Explosives or Dangerous Cargo. When such cargoes are loaded or discharged, a charge will be made by the Contractor based on the provisions of the wage scale applicable to these commodities, or in absence of a wage scale, charges will be made on the basis of the compensation which the Contractor may be compelled to pay for the performance of the work, plus 10% for overhead and gear, plus insurance, in lieu of the rates quoted, together with the cost of such equipment or apparel for the protection of the men, as may be required.

9. Damaged Cargo. When handling cargo damaged by fire, water, oil, etc., and where such damage causes distress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, charges are to be based on the labor cost in accordance with the International Longshoremen's Agreement, plus 10% for overhead and gear, plus insurance, in lieu of the rates quoted, together with the cost of such equipment for the protection of the men as may be required.

10. Refrigerator or Cooled Space. Cargo handled to or from refrigerator or cooled space, in the absence of a special rate, will be charged for at the labor cost specified in [fol. 127] the wage agreement, plus 10% for overhead and gear, plus insurance. When commodities so handled are

quoted in the rate schedule the additional labor cost required by the wage agreement, plus insurance, will be added to the rates.

11. Rehandling or Shifting of Cargo. The rates quoted apply to one handling of cargo. When rehandling, resorting or shifting of cargo is necessary through no fault of the Contractor, the time required for such work will be charged for at cost, plus 10% for overhead and gear, plus insurance.

12. Handling to and/or From Other Than Cargo Spaces. When it is necessary to handle cargo by hand to or from compartments other than usual cargo spaces, such as peaks, storerooms, bridge lockers, alleyways, or glazarettes, the labor necessary to accomplish the work will be charged for at cost, plus 10%, plus insurance, in lieu of the rate quoted.

13. Commodities for Which No Rates Are Quoted. Commodities for which no quotations have been requested and not appearing in the rate schedule, will be charged for at cost plus 10% and insurance. Rates quoted subsequent to the acceptance of this contract will become a part thereof and subject to the general terms of the contract unless otherwise specified.

14. Notice of Arrival. Masters of vessels under this agreement shall be instructed by the owners to communicate with the contractor by radio or telegram advising the expected arrival at least 36 hours in advance.

[fol. 128] 15. Payment. Bills are payable upon presentation to the Owners, Agents, or Charterers.

16. Terminating Contract. The Owners, Agents, or Charterers shall have the right to terminate this contract at any time upon thirty (30) days notice—in writing to the Contractor.

17. Acceptance. The terms of this agreement are accepted, if such acceptance is noted hereon by the Owners, Agents, or Charterers, or their representatives, or in the absence of such notation, if the work contemplated under the terms of this agreement is performed by the Contractor.

Accepted:

Cunard White Star S/S Co., Ltd.

John T. Clark & Son.

TAXPAYER'S EXHIBIT 9 IN EVIDENCE

Memorandum of Agreement between Ellerman and Bucknall Steamship Company Limited (hereinafter referred to as "Bucknalls") of the first part and John T. Clark & Son Inc. (hereinafter referred to as "Clarks") of the second part.

This Agreement shall have effect from 1st July, 1939 and continue thereafter subject to three months notice in writing by either side, except if at any time during the currency of this contract Bucknalls shall have cause for dissatisfaction with the work done, when they shall be at liberty to cancel the contract forthwith.

[fol. 129] Clarks shall take delivery of goods, whether by land or by water, at the point where the shipper is bound to deliver them, transport the cargo to and load on board the oncarrying ship with all due dispatch, in any part of the ship in which it is determined to carry cargo for the voyage, including building up wings when midships are required to be kept open, and safely and properly stow same according to the destination, laying dunnage and platforms and chocking off and tomming where ne ary, all to the satisfaction of the Board of Underwriters of New York and/or other Surveyors.

Clarks shall break out, discharge and place the cargo on the wharf or into craft as required, and the cargo discharged on the wharf shall be placed as far as possible according to marks, and all transhipment cargo shall be placed on the wharf according to destination, so that it can be promptly forwarded without confusion, and all valuable cargo such as shellac, rubber, mica, goatskins, etc. shall be kept quite apart from other goods on the wharf.

All the work to be done with every care and due dispatch to the satisfaction of Bucknalls or their representatives.

Clarks shall supply all necessary tackle and appliances. Ship to supply winches and sufficient steam for their efficient operation; hatch tents, light for night work, rope for falls and slings, tugs, coal hoisters, derricks or cranes for such heavy lifts as exceed the capacity of the ship's gear, and hoisters or cranes in lieu of ship's winches. In the case of Grain Cargoes the ship is to supply bags, separation [fol. 130] cloths and dunnage boards whenever necessary; when requested, Clarks will supply such material at current rates.

Clarks shall be responsible for and indemnify and save harmless Bucknalls and/or the Owners and/or the Charterers against damage or loss to ship and/or cargo due to the negligence of Clarks or their workmen, to the same extent as Bucknalls and/or the Owners and/or the Charterers are responsible for such damage or loss to third parties. When damage or loss occurs to ship and/or cargo by reason of such negligence the ship's officers or other authorized representative shall call this to Clarks attention and the responsibility fixed at that time insofar as it may be possible to do so.

Clarks agree to take every precaution to see that their men do not smoke in the holds, and also agree that any man found smoking will be dismissed.

Clarks shall not sublet any of the work except by written consent first obtained from Bucknalls.

Clarks agree to give the ships the best possible attention and dispatch and guarantee to provide sufficient men to carry out the work, but they are not to be held responsible for strikes, or delays from accidents beyond their control.

In the event of strikes, lockouts, or other labour difficulties, Clarks will, if able to work, do so upon a basis of cost plus 10% and insurance, in lieu of the rates quoted, unless notified by the Owners, Agents, or Charterers that no work is to be performed.

Overtime and Meal Hours, when worked, will be charged for upon the basis of the rates provided in the prevailing wage scale of the port as set out hereafter. When men are [fol. 131] employed to work outside the harbour limits and travel time is required to be paid to the men in accordance with the wage scale, such travel time will be charged for at cost, plus insurance. When ships are worked in the stream or other places where means of transportation for the men are required, any expenses incurred will be charged for at cost.

When men are employed and detentions in excess of fifteen minutes occur, or when men are employed and are unable to work through causes beyond Clarks control, or when men are to be paid for a minimum working period in accordance with the wage agreement, the cost of such time will be charged at cost plus insurance.

When explosives or dangerous cargoes are loaded or discharged, a charge will be made by Clarks based on the provisions of the wage scale applicable to these commodi-

ties, or in the absence of a wage scale, charges will be made on the basis of the compensation which Clarks may be compelled to pay for the performance of the work plus 10% for overhead and gear, plus insurance, in lieu of the rates quoted, together with the cost of such equipment or apparel for the protection of the men, as may be required.

When handling cargo damaged by fire, water, oil, etc. and where such damage causes distress or obnoxious conditions, or in all cases when the men are called upon to handle cargo under distress conditions, charges are to be based on the labour cost in accordance with the International Longshoremen's Agreement plus 10% for overhead and gear plus insurance, in lieu of the rates quoted, together with the cost of such equipment for the protection of the men as may be required.

[fol. 132] Clarks shall be paid for handling cargo at the following inclusive rates:

LOADING.		
Case Oil—Yard or Dock (Kerosene, Benzine, Naptha, Turpentine, Gasolene and other like products)—High top or low top	$ .04	per case
General Cargo—up to 5 tons weight	1.16	per ton of 40 cu. ft. Or 2,240 lbs.
General Cargo—from 5 to 10 tons weight	1.40	" " "
General Cargo—over 10 tons weight	1.60	" " "
Locomotive and Car Material	1.50	" " "
Structural and Bridge Material	1.68	" " "
Grain, Flour, Meal, or Samp in bags	1.15	per ton weight
Sulphate of Ammonia in bags	1.15	" "
Cotton	.45	per bale
Tobacco (Hogsheads)	1.45	per ton
Rosin	1.50	per ton weight
Railroad Iron up to and including 45 feet	1.25	per ton
Railroad Iron over 45 feet and up to 60 feet	1.35	" "
Bar Iron	1.25	" "
Pipes of all sizes	1.50	" "
Steel Plates	1.50	" "
Apples	.095	" barrel
Apples	.044	" box
Unboxed Automobiles	.68	" ton of 40 cu. ft.
Newspapers in Bales	1.30	" manifest ton
Plus 3.8% due wages—1/1/40—		
DISCHARGING:		
Calcutta, Rangoon, Madras, Chittagong, and Coconada cargo, also Tea, Wool, Skins in bales or casks, Cotton, and Sisal	$ .68	per ton
Ceylon, Alleppey, Tellicherri, Malabar Coast, Aden, Port Sudan, Cochin, Calicut, Mangalore, Tuticorin, Port Said, Straits, Singapore, and Dutch East Indies cargo, also Onions, Wool, and Gambia	1.08	" "
Pig Iron, Ore in bulk	.80	per ton weight
Tin, Ore in bags	.90	per ton weight
Coffee per bag of 120 lbs.	.062	

[fol. 133]

Kapoc	1.90 per ton of 2,240 lbs.	
Kapoc	.95 per ton of 50 cu. ft.	
Paraffin Wax, Oil	1.25 per ton	
Rattâns	1.80 " "	
Bombay and Karachi General cargo	.55 per ton of 40 cu. ft.	
Bombay and Karachi General cargo	.90 per ton of 14 cwt.	
Coaling	$ 1.10 per ton	
Shifting Coal and Discharging	1.06 " "	
Overtime per gang per hour (loading)	$14.50	
Overtime per gang per hour (discharging)	16.50	
Head Foreman—per hour	.72	
Asst. Foreman " "	.72	
Plan Clerk	.66	1/4/40
Timekeeper	.66	1940
Extra Labour, Day rate (per man)	$ 1.26 per hour	1.32
Extra Labour, Day rate (per foreman)	1.44 " "	1.50
Extra Labour (overtime) per man	1.92 " "	1.98
Extra Labour (overtime) per foreman	2.16 " "	2.32

The rates include the cost of all trucking, winchmen, compensation insurance, old age benefit and Social Security Taxes whether Federal or State, tiering, rigging and unrigging, taking off and putting on hatches, mooring and unmooring, hoisting charges when vessel is loading at Oil Yard, shifting barges within reach of ship's tackle, and breaking down cargo on the Pier when loading. Tonnages as per ship's manifest unless otherwise quoted.

All rates quoted are based on and subject to the prevailing wage scale and working conditions in the port of loading or discharge. In the event of an increase or decrease in such wage scale, or change in working conditions, the rate will as a consequence be proportionately increased or decreased.

[fol. 134] The rates quoted are inclusive of insurance. Clarks agree to carry Workmen's Compensation Insurance for the protection of their employees and a full Public Liability Insurance for the protection of third parties.

The rates quoted apply to one handling of cargo. When rehandling, resorting, or shifting of cargo is necessary through no fault of Clarks, the time required for such work will be charged for at cost, plus 10% for overhead and gear, plus insurance.

When it is necessary to handle cargo by hand to or from compartments other than usual cargo spaces such as peaks, store-rooms, bridge, alleyways, lazarettes, the labour necessary to accomplish the work will be charged for at cost plus 10% plus insurance in lieu of the rate quoted.

Cargo handled to or from refrigerated spaces when cooled for the purpose of carrying cargo will be charged in the

absence of a special rate at the labour cost specified in the wage Agreement, plus insurance. When commodities so handled are quoted in the rate schedule the additional labour cost required by the wage Agreement, plus insurance, will be added to the rates.

Commodities for which no rates are quoted to be handled at General Cargo Rate until a rate can be mutually agreed.

Bills are payable promptly upon presentation to the Owners, Agents, or Charterers.

For John T. Clark & Son Inc., H. J. Beardell, Vice President.

For Ellerman & Bucknall Steamship Co. Ltd., C. Aubrey Lloyd, Managing Director.

[fol. 135] TAXPAYER'S EXHIBIT 10 IN EVIDENCE

This Agreement entered into this 15th day of November 1940, by and between MUNARGO LINE COMPANY, a Delaware corporation, hereinafter called the Steamship Company, and JOHN T. CLARK & SON, a New York corporation, hereinafter called the Contractor, witnesseth that

Whereas the Steamship Company is the owner of the Steamship "MUNARGO" and is operating her in her usual trade between New York and Miami, Nassau and Havana, and

Whereas the Contractor is engaged in the stevedoring business at the Port of New York, and Hoboken, N. J.

Whereas the Contractor desires to perform the stevedoring in connection with the loading and unloading of the Steamship "MUNARGO" at Pier 16, Hoboken, N. J., and the Steamship Company is willing to have the Contractor perform the stevedoring work in connection therewith upon the terms and conditions hereinafter set forth,

Now, Therefore, in consideration of one dollar and other good and valuable consideration receipt of which is hereby acknowledged and of the mutual promises hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

1. The Contractor agrees promptly and carefully to receive and deliver, and to load and unload the cargo of the Steamship "MUNARGO" including mail and passengers' baggage, and to furnish sufficient, suitable and competent laborers and proper equipment therefor, and in connection

[fol. 136] therewith to provide the following services and equipment at its own expense and to assume and pay for the following costs:

(a) All necessary gear except winches, hoists, derricks, falls, topping lifts and guys constituting part of the ship's regular equipment, or other substituted or additional equipment which the Steamship Company may elect to supply.

(b) Handling lines of Steamship "MUNARGO" on arrival at and departure from dock between the hours of 8:00 A. M. and 5:00 P. M. and also handling lines of lighters and other craft between the same hours.

(c) Rigging and unrigging the Steamship "MUNARGO" as required by the loading or discharging to be performed and including removing and replacing all strongbacks and hatches.

(d) Shifting of lighters and similar craft by hand when such operation is practicable.

(e) Extra costs for loading or discharging refrigerated cargo from the ship's refrigerated space or for discharging wet hides, except as hereinafter provided.

(f) Expenses or compensation to laborers in the event the ship is loaded at the so-called "Ford Plant" at Edgewater, New Jersey.

(g) Breaking down cargo tiered on dock when loading ship and tiering cargo when discharging, except as hereinafter provided.

[fol. 137] (h) Coopering cargo including coopering materials except new packages when such are required.

(i) Expense caused by all detentions however caused except as hereinafter provided.

(j) Opening and closing pier doors as and when required by the Steamship Company.

2. The Steamship Company shall pay the following expenses in connection with the stevedoring work provided for herein but only when the expenses are incurred upon its order or with its knowledge and consent:

(a) Full overtime to laborers handling lines of Steamship "MUNARGO" or of lighters and other similar craft before 8:00 A. M. or after 5:00 P. M.

(b) The Steamship Company shall pay Eleven Dollars and Fifty Cents ($11.50) for each rigging or unrigging of hatch tents.

(c) Rigging and unrigging incidental to the handling of heavy or unusual cargo, by which terms is meant such heavy or bulky packages or pieces as cannot be safely handled by ship's ordinary rigging, the sum of Twenty-three Dollars ($23.00).

(d) Extra labor employed to tier cargo over ten feet (10') high.

(e) It is understood and agreed that the Contractor [fol. 138] shall cover the Steamship Company by insurance in a form to be approved by the Steamship Company against all risks of loss or damage to motor boats or similar craft while being loaded to or discharged from vessel in New York Harbor. The premium for said insurance shall first be paid by the Contractor and it shall be reimbursed for said premium or premiums by the Steamship Company.

(f) Rehandling cargo on board the vessel unless due to the error or fault of the Contractor or its servants and employees.

(g) Detentions of more than fifteen minutes each if caused by failure of equipment or appurtenances of the Steamship Company or by the non-arrival of cargo.

All work for the account of the Steamship Company under the provisions above stated shall be performed by the Contractor with all reasonable dispatch, and the Contractor shall charge the Steamship Company for such work at the actual cost of labor plus insurance excluding overhead.

3. The Steamship Company agrees to pay the Contractor for services performed hereunder at the following rates:

RECEIVING AND DELIVERING	
Contractor to receive, deliver, check, cooper and watch inbound and outbound cargo; receive passengers' baggage both inbound and outbound; clean dock, passengers' waiting room, and office. All of this service for	$. .55 per payable ton
(Munargo Line Company agrees to supply baggage master on sailing and arrival days.)	
[fol. 139]	
On inbound sugar discharged over ship's side to lighters, the rate will be	.22 per payable ton
Contractor to furnish extra labor when required in discharging trucks on Miami cargo only at:	
Straight time	1.10 per hour
Overtime	1.65 per hour
Plus Workmen's Compensation, Federal and State Unemployment Insurance.	

Where checkers are required to work overtime, the Steamship Company agrees to pay differential only at the rate of	.55 per hour
Plus Workmen's compensation, Federal and State Unemployment Insurance.	
Discharging Molasses	
Calibration of tanks and all necessary papers	15.00 per ship
Loading	
General Cargo	1.34 per payable ton
Passenger Automobiles as baggage	2.35 each
Discharging	
General Cargo	$ 1.34 per payable ton
Sugar—end of ship's tackle	.64 per payable ton
Sugar discharged on dock man high	.95 per payable ton
Passenger Automobiles as baggage	2.35 each
Loading and/or Discharging	
Passengers' Baggage	Cost Plus 10%
Mail	.07 per bag
Overtime per man	.66
Overtime per timekeeper	.66
Overtime per hatch foreman	.72
Overtime per head foreman	.72
Overtime per asst. head foreman	.72
Overtime discharging gang	15.90 per hour
Overtime loading gang	14.58 per hour
Labor Supplied	
Per man	1.32 per hour
Per foreman	1.50 per hour
Overtime Labor Supplied	
Per man	1.98 per hour
Per foreman	2.22 per hour

The above rates include insurance and taxes.

[fol. 140] The foregoing rates are understood to be based on the prevailing wage scale and working conditions at the Port of Hoboken, N. J., on the date of this agreement, and it is agreed that in the event of an increase or decrease in such wage scale or a material change in such working conditions during the period this agreement is in effect, such rates shall be increased or decreased accordingly.

4. The Steamship Company agrees to notify the Contractor a reasonable time in advance of each arrival of the Steamship "Munargo" at Pier 16, Hoboken, N. J., and to pay the Contractor's bills for services and expenses hereunder within a reasonable time after presentation.

5. The Contractor hereby assumes all responsibility and obligation for and agrees to indemnify and save harmless the Steamship Company, its vessels, agents, officers and crews from and against any and all claims, losses, damages,

costs and expenses of whatsoever kinds arising or resulting from or in connection with claims for death or personal injuries caused by or claimed to have been caused by or in connection with any of the work referred to herein, whether on board the Steamship "MUNARGO" or elsewhere, at or within the Port of Hoboken or other places adjacent thereto, where work is being performed under this agreement, and whether caused by the negligence of the Steamship Company, its agents or employees, or otherwise, including the following, but not excluding other causes: the use of winches, hoists, derricks, cranes, blocks, ropes, wires, falls, hatches, tackle, equipment or other gear or materials used or which should have been used on or in connection with the work referred to herein, or contemplated hereby, [fol. 141] whether belonging to the Steamship Company, or the Steamship "MUNARGO" or to the Contractor.

6. The Contractor undertakes and agrees to carry and to pay all premiums and charges for Workmen's Compensation Insurance as required by the laws of the United States, the State of New York, and the State of New Jersey, and shall file with the Steamship Company such certificates as may be required by any of the above laws, and shall exhibit to the Steamship Company at any time any and all insurance policies and premium receipts in connection with these and other provisions of this paragraph. The Contractor also agrees to carry and pay the premiums and charges for Public Liability Insurance to protect the Steamship Company, its vessels, agents, officers and crews, against claims or asserted claims of third parties injured during or in connection with the performance of work under or pursuant to this contract; and the Contractor shall carry and pay all charges and premiums for insurance protecting the Steamship Company, its vessels, agents, officers and crews against any and all possible actions or proceedings and the costs and expenses thereof brought by employees of the Contractor against the Steamship Company, its vessels, agents, officers or crews. The Steamship Company shall be included as co-insured in each insurance policy except the Workmen's Compensation policies issued to the Contractor pursuant to this paragraph, and all the policies referred to herein and contemplated hereby shall be submitted to and approved by the Steamship Company.

7. The Contractor shall indemnify and hold harmless the Steamship Company against all claims, demands, actions [fol. 142] and judgments which may be based upon or arise or grow out of delay in the loading or discharging of cargo or any loss including pilferage or damage to cargo resulting from the performance by the Contractor of its obligations hereunder or from defects in any gear or equipment furnished by the Contractor or by any improper acts or omissions of the Contractor or its employees.

8. It is understood and agreed that nothing herein shall obligate the Steamship Company to operate the Steamship "Munargo" out of the Port of Hoboken, and the Steamship Company may in its discretion, at any time and from time to time, for any reason whatsoever, lay up the said vessel, or sell or charter her to any person whatsoever (including corporations affiliated with the Steamship Company), or operate the vessel out of other ports or places, without any responsibility therefor to the Contractor.

9. This agreement shall become effective on the day of the date hereof, and shall continue in effect until terminated by either party by giving the other at least thirty days' notice in writing.

In Witness Whereof the Munargo Line Company and John T. Clark & Son have caused these presents to be executed by their corporate officers thereunto duly authorized the day and year first above written.

Munargo Line Company, by C. W. Munson, President.

Witness: Chas. O. Baldwin.

John T. Clark & Son, by H. J. Beardell, Vice President.

Witness: R. J. Davis.

[fol. 143] TAXPAYER'S EXHIBIT 11 IN EVIDENCE

General Cargo—Cargo Repairment

Checkers—Clerking

Port Watchmen

Agreements negotiated by the New York Shipping Association with the International Longshoremen's Association for the Port of New York and vicinity, effective January 1, 1940.

Issued by New York Shipping Association, 80 Broad Street, New York, N. Y.

Members are requested to direct inquiries regarding these Agreements to J. V. Lyon, Chairman, Conference Committee.

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A list of all signatories to each of the above Agreements is on file at the offices of the New York Shipping Association.

Printed April 1940

[fol. 145] I. General Cargo Agreement

Dated November 25, 1938; modified and extended December 29, 1939

This Agreement, made and entered into by and between the undersigned members of the New York Shipping Association, Deepwater Steamship Lines and Contracting Steve-

dores of the Port of Greater New York and vicinity, as party of the first part, and the International Longshoremen's Association and its affiliated Locals, as party of the second part, covers the loading and unloading of ships and the bunkering of same in the Port of Greater New York and vicinity.

1. Members of the party of the second part shall have all of the work pertaining to the rigging up of ships and the coaling of same, and th- discharging and loading of all cargoes including mail, ships' stores and baggage. When the party of the second part cannot furnish a sufficient number of men to perform the work in a satisfactory manner, then the party of the first part may employ such other men as are available.

2. (a) The basic working day shall consist of 8 hours, and the basic working week shall consist of 44 hours. Men shall work any night of the week, or on Sundays, Holidays, or Saturday afternoons, when required. On Saturday night, work shall be performed only to finish a ship for sailing on Sunday, or to handle mail or baggage.

(b) Meal hours shall be from 6 A. M. to 7 A. M., from 12 Noon to 1 P. M., from 6 P. M. to 7 P. M., and from 12 Midnight to 1 A. M.

[fol. 146] No work shall be performed during meal hours, except on arrival or sailing days or to complete discharging or loading a hatch within the meal hour or by mutual agreement between the parties hereto in the event of other emergencies.

(c) Legal Holidays shall be: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday on the New Jersey Shore: Decoration Day, Fourth of July, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving, Christmas, and such other National or State Holidays as may be proclaimed by Executive authority.

It is understood that so far as possible only baggage and mail shall be handled on Labor Day, Fourth of July and Christmas Day.

3. (a) Straight time rate shall be paid for any work performed from 8 A. M. to 12 Noon and from 1 P. M. to 5 P. M., Monday to Friday inclusive, and from 8 A. M. to 12 Noon Saturday.

(b) All other time, including meal hours and the Legal Holidays specified herein, shall be considered overtime and shall be paid for at the overtime rate.

(c) The full meal hour rate shall be paid if any part of the meal hour is worked and shall continue to apply until men are relieved.

4. Wage Scale: The wage scale shall be as follows:

[fol. 147]

	Straight Time Hourly Rate	*Overtime Hourly Rate*
(a) General Cargo of every description, including barrel oil when part of General Cargo, and all General Cargo handled in refrigerator space with the temperature above freezing	$1.10	$1.65
(b) Bulk Cargo, ballast, and all coal cargoes, including loading and trimming coal for a ship's own bunker purposes	$1.15	$1.70
(c) Cement in bags	$1.15	$1.70
(d) Wet hides, creosoted poles, creosoted ties, creosoted shingles and soda ash in bags	$1.25	$1.80
(e) Refrigerator space cargo—meats, fowls and other similar cargo—which is to be transported with the temperature in the refrigerator at freezing or lower; these rates shall be paid the full gang	$1.30	$1.85
(f) Kerosene, gasoline and naphtha in cases and barrels, when loaded by case oil gangs, and with a fly	$1.30	$1.95
(g) Explosives	$2.20	$3.30
(i) When handled down the Bay, the time shall start from the time men leave the pier until the time they return to pier.		
(ii) When handled down the Bay, men shall supply their own meals, but $1.00 per meal shall be allowed by the employer.		
(iii) When explosives, such as are customarily handled down the Bay are handled at any pier, men shall be paid at the explosives rate of pay.		
(iv) Any dispute as to what explosives are, shall be settled by the Bureau of Explosives whose decision shall be final and shall be accepted by both sides.		
(h) Damaged Cargo	$2.20	$3.30
(i) All cargo damaged by either fire or water, when such damage causes unusual distress or obnoxious conditions, and, also, in all cases where men are called upon to handle cargo in the ship under distress conditions.		
(ii) The damaged cargo rates shall not be paid when sound cargo in a separate compartment is handled.		

5. When rubbers are required for handling wet cargo or explosives, or leather hand pads or gloves for barbed wire, they shall be provided by the employer.

[fol. 148] 6. Every effort shall be made to arrange for the payment of wages at a locality and at a time as convenient as possible to the men. Any abuse arising under this Clause shall be brought to the attention of the Arbitration Committee provided for in Clause 18.

7. The Foreman Stevedore shall hire the men. If he is not available, he may designate a substitute.

8. (a) Shaping time shall be at 7:55 A. M., 12:55 P. M. and 6:55 P. M. Men may be ordered out, however, for any other hour, Provided that those wanted between the hours of 8 A. M. and 12 o'clock, Noon, shall receive notice at the 7:55 A. M. shape, those wanted between the hours of 1 P. M. and 5 P. M. or at 5 P. M. or at 6 P. M., shall receive notice at the 12:55 P. M. shape, and those wanted at 7 P. M. or later shall receive notice at the 6:55 P. M. shape. When men are ordered out for work beginning Sunday morning, they shall be hired in regular gangs before 12 Noon on the Saturday preceding. Men wanted for work on a ship arriving on any of the Holidays referred to in Clause 2-(c), may be shaped only once on the Holiday at 7:55 A. M. at which time they shall receive definite orders whether or not they will be employed during the day or night.

(b) When men are employed at 8 A. M. or 1 P. M., or are ordered out for another hour, during the forenoon and/or afternoon on any week day from Monday to Friday inclusive, they shall receive a minimum of two hours' pay [fol. 149] for each period they are employed or report for work when so ordered out, regardless of weather conditions, unless the ship or the hatch in which the men are employed completes discharging or loading in less time.

(c) When men are employed on Saturday forenoon for any time between 8 A. M. and 12 Noon, they shall receive four hours' pay, except that when work is prevented by weather conditions they shall receive a minimum of two hours' pay.

(d) When men who have been employed on the premises on Saturday forenoon are re-employed on Saturday afternoon, they shall receive a minimum of two hours' pay for

the afternoon period from 1 P. M., regardless of weather conditions, unless the ship or the hatch in which the men are employed completes discharging or loading in less time. When men are re-employed on Saturday afternoon to resume work after 1 P. M., or when men who have not been employed on the premises on Saturday forenoon are employed on Saturday afternoon, they shall receive a minimum of four hours' pay from the hour they are ordered out and report for work, except that when work is prevented by weather conditions they shall receive a minimum of two hours' pay.

(e) When men are employed on Sundays or Holidays, they shall receive a minimum of four hours' pay for any time between 8:00 A. M. and 5:00 P. M., except that when work is prevented by weather conditions they shall receive a minimum of two hours' pay. However, when men who [fol. 150] have been employed in the forenoon have been knocked off because of weather conditions, they may be ordered back for work during the afternoon period, when they shall receive a minimum of two hours' pay for that period, regardless of weather conditions.

(f) When men who have been employed on the premises in the afternoon are re-employed at 7:00 P. M., they shall receive a minimum of two hours' pay, regardless of weather conditions, unless the ship or the hatch in which the men are employed completes discharging or loading in less time.

When men who have not been employed on the premises in the afternoon are employed at 5 P. M. or at 6 P. M., they shall receive a minimum of four hours' pay, such pay to commence at the hour ordered out, whether work begins then or later, except that when work is prevented by weather conditions they shall receive a minimum of two hours' pay.

When men who have not been employed on the premises in the afternoon are employed at 7 P. M., or later, they shall receive a minimum of four hours' pay, such pay to commence at 7 P. M., whether work begins then or later, except that when work is prevented by weather conditions they shall receive a minimum of two hours' pay.

(g) When men are ordered out and report for work at 7:00 A. M. but work is prevented by weather conditions at any time before 8:00 A. M., they shall be paid until 8:00 A. M.:

(i) On week days, including Saturday forenoon—one hour at the overtime rate and one hour at the straight time rate.

[fol. 151] (ii) On Sundays and Holidays—two hours at the overtime rate.

When men are ordered out and report for work at 7:00 A. M. and work is prevented by weather conditions at any time between 8:00 A. M. and 10:00 A. M., they shall be paid until 10:00 A. M.:

(i) On week days, including Saturday forenoon—one hour at the overtime rate and two hours at the straight time rate.

(ii) On Sundays and Holidays—three hours at the overtime rate.

(h) Only men needed to dock ships or handle mail may be ordered out at 6:00 A. M., and they shall be paid at the overtime rate until relieved, with a guarantee of four hours' work.

(i) The term "weather conditions," whenever referred to in this agreement, shall be understood to include such conditions as rain, snow or sleet, which conditions make it impracticable to work the ship; freezing weather when handling perishable cargo, which condition makes it impracticable to work the ship; fog, high wind, ice or abnormal tidal conditions which delay or prevent the berthing of the ship; also high winds or rough seas which delay or prevent the towing of lighters and other harbor craft to the ship.

9. When men are knocked off work five minutes after the hour or later they shall be paid for one-half hour, and when knocked off thirty-five minutes after the hour they shall be paid for one hour.

[fol. 152] 10. (a) Gangs shall be knocked off ten minutes before quitting time to replace hatch covers.

(b) The party of the second part undertakes to see that under no circumstances shall men leave a ship, or fail to return if ordered back, without replacing hatch covers, and further specifically agrees to discipline any man guilty of a violation of this rule.

11. No chemicals improperly packed or in any but first class shipping condition are to be accepted or loaded on board ship. If any question arises regarding the condition of this class of cargo, the matter shall be left to the proper authority whose decision shall be final.

12. The ship shall provide suitable shelter for men working on deck in bad weather.

13. (a) Minimum number of men in gang when loading or discharging general cargo shall be 20 men, not less than 8 holdmen discharging and 8 holdmen loading. This Clause shall apply to all general cargo Except:

(i) Cork, woodpulp, burlap, newsprint and logs where hooks are used;

(ii) Heavy lifts or sugar at sugar refineries or warehouses or lumber at lumber terminals,

(iii) Work at Ford's plant at Edgewater; if working offshore at Ford's plant, not less than four men shall be used on lighters.

[fol. 153] (iv) For discharging bale rubber—6 holdmen may be employed with a gang consisting of 26 men; for a gang consisting of from 20 to 25 men or of 27 or more men, 8 holdmen must be employed.

A Committe- representing both sides shall consider and rule upon any other disputed cases that may arise.

(b) Dockmen working inshore may be transferred to other gangs should their own gang go offshore. They must return to their original gang, however, when work is resumed inshore.

(c) When "two up-and-down falls with one Burton fall" are used for loading or discharging general cargo, a gang of 27 men including 10 holdmen shall be employed.

(d) The employer shall have the right to rig with the so-called "pick and strike" method or with the "falls together" or any other practical method, and in all cases where more than the minimum number of men are required, the employer shall be the judge of the number of extra men needed.

14. There shall be no beer or other intoxicating liquors brought upon the property of the party of the first part and, also, there shall be no smoking on the premises of the party of the first part. For a violation of this Clause the

guilty person may be discharged and given no further employment by the party of the first part.

[fol. 154] It is clearly agreed that no men are to be allowed to leave the pier during working hours for the purpose of obtaining drink, or for any purpose whatever, except with the express permission of the Foreman Stevedore in charge. The employers shall supply proper drinking water on pier, also adequate and clean toilet facilities and, further, shall make adequate arrangements to relieve deckmen when necessary.

15. The party of the second part will not try to uphold incompetency, shirking of work, pilfering or broaching of cargo; any man found guilty of the above offenses shall be dealt with as the party of the first part sees fit, or as the circumstances may require, if any man is convicted of theft he shall be expelled from the Union.

16. There shall be no discrimination by the party of the first part against any member of the party of the second part, nor shall the party of the second part discriminate against the party of the first part.

17. When men are specifically ordered out from New York or Brooklyn to work on the North and East Rivers above 75th Street, or on piers at Weehawken, Communipaw or West New York, carfare in excess of that spent in traveling to their usual place of employment shall be allowed.

Men specifically ordered out from New York or Brooklyn to work at Claremont, Edgewater or Astoria shall receive the equivalent of one hour's pay at the prevailing day rate, plus cost of transportation, and at Yonkers, Bayonne, Carteret, Chrome, Port Newark, Greenville or Bayway shall [fol. 155] receive the equivalent of two hours' pay at the prevailing day rate, plus cost of transportation.

Men specifically ordered out from Jersey City or Hoboken to work at Claremont, Edgewater, Bayonne, Port Newark, Greenville or Astoria shall receive the equivalent of one hour's pay at the prevailing day rate, plus cost of transportation, and at Yonkers, Carteret, Chrome or Bayway shall receive the equivalent of two hours' pay at the prevailing day rate, plus cost of transportation.

18. In the event of any dispute or controversy arising during the life of this agreement as to the interpretation of same, the men shall continue to work pending its adjust-

ment in the following manner: Upon written notice to the New York Shipping Association by either party, the matter in dispute shall be submitted to a Committee of four, two of whom shall be representatives of the party of the first part and two shall be representatives of the party of the second part; a decision of the majority of this Committee shall be final and binding. The Committee of four shall meet, whenever possible, on the Tuesday following the pay-day after the matter in dispute has arisen. In the event of failure on the part of this Committee of four to reach a satisfactory decision, they shall proceed to select a fifth member, who must be satisfactory to both sides, as Chairman, and the decision of the majority of the Committee so augmented shall be final and binding upon the parties. The fifth member shall be selected within seven days after the date of the failure of the Committee of four to reach a satisfactory decision.

[fol. 156] 19. Any man found guilty of violating any provision of this agreement shall be immediately expelled from his local organization.

20. No Steamship Company or Contracting Stevedore and no official, District Council, or Local of the International Longshoremen's Association, shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties, shall be determined only by an Arbitration Committee appointed in accordance with Clause 18.

21. This agreement shall be effective from January 1, 1940 to September 30, 1941. Either of the parties may give written notice on or before September 1, 1940, requesting reconsideration of the *wage rates only;* in the event such a request is made, either party may then submit proposals and the parties shall meet to discuss the matter; any agreement reached on a revision of such wage rates shall become effective October 1, 1940 and shall remain in effect up to and including September 30, 1941.

II. Cargo Repairmen Agreement

Dated November 25, 1938; Modified and Extended December 29, 1939

This Agreement, made and entered into by and between the undersigned members of the New York Shipping Association, Deepwater Steamship Lines and Contracting [fol. 157] Stevedores of the Port of Greater New York and vicinity, as party of the first part, and the International Longshoremen's Association for Local 1171, Cargo Repairmen, party of the second part, covers the loading and unloading of deepwater vessels in the Port of Greater New York and vicinity.

1. Members of the party of the second part shall have all of the cargo repair work.

2. Except as hereinafter specified, Cargo Repairmen on deepwater vessels in the Port of Greater New York and vicinity, shall work under the same conditions and maintain the same differentials as the Longshoremen.

3. Cargo Repairmen shall be employed and paid on the half day basis at the prevailing rate whether work begins or not, Except that when work cannot begin owing to weather conditions, the weather conditions provisions of the Longshoremen's General Cargo Agreement shall apply, with the understanding, however, that if work is actually begun they shall be paid on the half-day basis even though work is subsequently knocked off because of weather conditions.

4. Cargo Repairmen in charge of piers as foremen for hiring, supervising or otherwise in charge of men shall be paid one dollar and twenty cents ($1.20) per hour, and for overtime at the rate of one dollar and ninety-five cents ($1.95) per hour.

5. Cargo Repairmen shall be paid off when laid off during daylight hours, but this shall not apply to Sundays or Holidays.

[fol. 158] 6. This agreement shall be effective from January 1, 1940 to September 30, 1941. Either of the parties may give written notice on or before September 1, 1940, requesting reconsideration of the *wage rates only;* in the event such a request is made, either party may then submit pro-

posals and the parties shall meet to discuss the matter; any agreement reached on a revision of such wage rates shall become effective October 1, 1940 and shall remain in effect up to and including September 30, 1941.

III. Checkers Agreement

Dated November 25, 1938; Modified and Extended December 29, 1939

This Agreement, made and entered into by and between the undersigned members of the New York Shipping Association, Deepwater Steamship Lines and Contracting Stevedores of the Port of Greater New York and vicinity, as party of the first part, and International Longshoremen's Association and its affiliated Locals, as party of the second part, covers the loading and unloading of deepwater vessels in the Port of Greater New York and vicinity.

1. Members of the party of the second part shall have all of the work pertaining to the tallying and checking of all deepwater cargo, including mail and baggage. When the party of the second part cannot furnish a sufficient number of men to perform the work in a satisfactory manner, then the party of the first part may employ such other men as are available.

[fol. 159] 2. (a) The basic working day shall consist of 8 hours, and the basic working week shall consist of 44 hours.

(b) Meal hours shall be from 6 A. M. to 7 A. M., from 12 Noon to 1 P. M., from 6 P. M. to 7 P. M., and from 12 Midnight to 1 A. M.

No work shall be performed during meal hours, except on arrival or sailing days or to complete discharging or loading a hatch within the meal hour, or to receive or deliver cargo to or from trucks or steam lighters, or by mutual agreement between the parties hereto in the event of other emergencies.

(c) Legal Holidays shall be those specified in the Longshoremen's General Cargo Agreement.

3. (a) Straight day rate shall be paid for eight hours' work, or for any fraction thereof, performed from 8 A. M. to 12 Noon and 1 P. M. to 5 P. M., Monday to Friday, in-

clusive, and straight half-day rate from 8 A. M. to 12 Noon Saturday.

(b) All other time, including meal hours and the Legal Holidays specified herein, shall be considered overtime and shall be paid for at the overtime rate.

(c) The full meal hour rate shall be paid if any part of the meal hour is worked. A Checker who works during the meal hour on receiving or delivering cargo to or from trucks or steam lighters shall be relieved for his meal the hour immediately following; if relieved between 7 P. M. and 8 P. M., he shall be paid from 7 P. M.; when required to do so, however, he shall work through to 7 P. M., at which time he [fol. 160] shall either be relieved or be knocked off.

4. The wage scale shall be as follows:

	Straight Time Day Rate	*Straight Time Saturday Morning Rate*	*Overtime Hourly Rate*
(a) Checkers	$8.50	$4.25	$1.65
(b) Dock Bosses	$9.25	$4.62½	$1.65
(c) Explosives	$17.00	$8.50	$3.30
(i) When handled down the Bay, the time shall start from the time men leave the pier until the time they return to pier.			
(ii) When handled down the Bay, men shall supply their own meals, but $1.00 per meals shall be allowed by the employer.			
(d) All cargo damaged by either fire or water, when working under distress conditions	$17.00	$8.50	$3.30
(e) On cargo calling for double time under the Longshoremen's General Cargo Agreement, working off-shore or tallying from the dock into ship shall be paid for at double time rates under the conditions specified in such agreement.			

5. (a) Checkers shall be paid off when laid off during daylight hours, but this shall not apply to Sundays or Holidays.

(b) In all instances not covered by paragraph (a), every effort shall be made to arrange for the payment of wages at a locality and at a time as convenient as possible to the men. Any abuse arising under this paragraph shall be brought to the attention of the Arbitration Committee provided for in Clause 9.

6. (a) Checkers or tallymen shall be advised when discontinuing work for the day or night whether or not their services will likely be required for the following day.

(b) Men shall be notified before 5 P. M. of the day on which night work is to be performed; before 5 P. M. of the [fol. 161] day preceding Holiday work, and before 12 Noon on Saturday when Sunday work is to be performed.

7. (a) When men who have been employed during the day are ordered back, they shall receive a minimum of two hours' pay if laid off or finished sooner with the work at hand. When men ordered back, work until 11 P. M. or Midnight, and are again ordered back for 1 A. M., they shall receive a minimum of two hours' pay between 1 A. M. and 5 A. M.

(b) When men who have been employed on Saturday forenoon are ordered back to work on Saturday afternoon, and fail to work the full period through no fault of their own, they shall receive a minimum of two hours' pay. When men who have not been employed on Saturday forenoon are ordered out to work on Saturday afternoon, they shall receive a minimum of four hours' pay.

(c) When men are ordered out for work on Sundays or Holidays, between 8 A. M., and 12 Noon or between 1 P. M. and 5 P. M., and fail to work the full four hour period through no fault of their own, they shall receive a minimum of four hours' pay. When such men have been ordered out for work between 8 A. M. and 12 Noon, and are ordered back for work during the afternoon period, they shall receive a minimum of four hours' pay for work during the afternoon period.

(d) When fresh men are ordered out for work between 7 P. M. and 11 P. M., and fail to work the full four hour period through no fault of their own, they shall receive a [fol. 162] minimum of four hours' pay. When such men are ordered back for work between 1 A. M. and 5 A. M., they shall receive a minimum of four hours' pay for work during the second period.

8. *(The text of this Clause, relating to traveling time, is identical with that of Clause 17 (page 154) of the "General Cargo" Agreement.)*

9. *(The text of this Clause, relating to disputes or controversies, is identical with that of Clause 18 (page 155) of the "General Cargo" Agreement.)*

10. (*The text of this Clause, relating to interpretations, is identical with that of Clause 20 (page 156) of the "General Cargo" Agreement.*)

11. There shall be no beer or other intoxicating liquors brought upon the property of the party of the first part and, also, there shall be no smoking on the premises of the party of the first part. For a violation of this Clause the guilty person may be discharged and given no further employment by the party of the first part.

12. The party of the second part will not try to uphold incompetency, shirking of work, pilfering or broaching of cargo; any one guilty of the above offenses shall be dealt with as the party of the first part sees fit or as the circumstances require.

13. (*The text of this Clause, relating to discrimination, is identical with that of Clause 16 (page 154) of the "General Cargo" Agreement.*)

[fol. 163] 14. This agreement shall be effective from January 1, 1940 to September 30, 1941. Either of the parties may give written notice on or before September 1, 1940, requesting reconsideration of the *wage rates only*; in the event such a request is made, either party may then submit proposals and the parties shall meet to discuss the matter; any agreement reached on a revision of such wage rates shall become effective October 1, 1940 and shall remain in effect up to and including September 30, 1941.

IV. Clerking Agreement

Dated November 25, 1938; modified and extended December 29, 1939.

This Agreement, made and entered into by and between the undersigned members of New York Shipping Association, as party of the first part, and International Longshoremen's Association and its affiliated Locals, as party of the second part, covers cargo receiving and delivery clerks and timekeepers and their immediate assistants, employed by the party of the first part at piers in the Port of Greater New York and vicinity.

1. Members of the party of the second part shall have the preference of all work on the piers pertaining to the

receiving and delivery of all deep-water cargo. When the party of the second part cannot furnish a sufficient number of men to perform the work in a satisfactory manner, then the party of the first part may employ such men as are available.

[fol. 164] 2. The week shall consist of 44 hours, with an eight hour day, Monday to Friday, inclusive, from 8 A. M., to 5 P. M., with one hour for meals between 11 A. M. and 2 P. M., and Saturday from 8 A. M. to 12 Noon. Any other time in excess of that mentioned shall be considered as overtime and shall be paid for as such.

3. Head receiving and delivery clerks and head timekeepers shall receive $57.50 per week, inclusive of any holidays falling within the week.

Note: Effective January 1, 1940, head receiving and delivery clerks and head timekeepers *who are employed on a weekly basis* are to be paid for the full 44 hours referred to in the first sentence of Clause 2 and are to receive $58.81 per week. Such revised 44-hour weekly wage rate is to be considered as inclusive of, and as compliance with, both the regular and the overtime rates of pay requirements of the Federal Wage and Hour Act.

4. Assistant receiving and delivery clerks and assistant timekeepers shall receive $47.00 per week, inclusive of any holidays, falling within the week.

Note: All of the provisions of the "Note" under Clause 3 are applicable also to assistant receiving and delivery clerks and assistant timekeepers, except that such classifications of labor are to receive $48.07 per week.

5. Work on Saturday afternoons, Sundays, and at night by the clerks and timekeepers referred to in Clauses 3 and [fol. 165] 4 (above) shall be considered overtime and shall be paid for at the rate of $1.65 per hour.

If such clerks or timekeepers are called in to work on Sundays, they shall receive a minimum of four hours' pay (or $6.60) if ordered for work between the hours of 8 A. M. and 12 Noon, or between 1 P. M. and 5 P. M.; if called in between 8 A. M. and 12 Noon and ordered back to work between 1 P. M. and 5 P. M., they shall receive a minimum of four hours' pay for work done during the second period of the day.

6. Clerks and Checkers called in to work temporarily as assistants to receiving or delivery clerks or timekeepers shall be paid $1.25 per day in excess of the regular daily pay of Checkers, and for Saturday afternoon, Sundays, Holidays and at night overtime pay at the rate of $1.65 per hour. Holidays shall be those specified in the General Cargo Agreement.

If such temporary assistants are called in to work on Saturday afternoons they shall receive a minimum of two hours' pay (or $3.30).

If such temporary assistants are called in to work on Sundays or Holidays, they shall receive a minimum of four hours' pay (or $6.60), if ordered for work between the hours of 8 A. M. and 12 Noon, or between 1 P. M. and 5 P. M.; if called in between 8 A. M. and 12 Noon and ordered back for work between 1 P. M. and 5 P. M., they shall receive a minimum of four hours' pay for work done during the second period of the day.

If such temporary assistants are called in to work at night, they shall receive a minimum of four hours' pay (or [fol. 166] $6.60), if ordered for work between the hours of 7 P. M. and 11 P. M., or between 1 A. M. and 5 A. M.; if called in between 7 P. M. and 11 P. M. and ordered back for work between 1 A. M. and 5 A. M., they shall receive a minimum of four hours' pay during the second period of the night.

7. All members of the party of the second part who, on the effective date of this agreement (*), are employed on a weekly basis in the categories referred to in Clauses 3 and 4 (above) shall continue to be employed in their respective capacities and shall be protected to the extent of their rates of pay prevailing on the effective date of this agreement(*) if such rates are higher than the rates of pay provided for under this agreement and also of payment in full for vacations and sick leave if theretofore allowed by their respective employers; likewise, any such employees who, on the effective date of this agreement(*), are participating in pension plans, group insurance or other social security benefits, shall not be deprived of such advantages by this agreement.

(*) Note: October 1, 1938.

8. When temporary men are specifically ordered out from New York or Brooklyn to work on the North and East Rivers above 75th Street, or on piers at Weehawken, Communipaw or West New York, car-fare in excess of that spent in traveling to their usual place of employment shall be allowed. Temporary men specifically ordered out from New York or Brooklyn to work at Claremont, Edgewater or As-
[fol. 167] toria shall receive the equivalent of one hour's pay at the prevailing day rate, plus cost of transportation, and at Yonkers, Bayonne, Carteret, Chrome, Port Newark, Greenville or Bayway shall receive the equivalent of two hours' pay at the prevailing day rate, plus cost of transportation.

Temporary men specifically ordered out from Jersey City or Hoboken to work at Claremont, Edgewater, Bayonne, Port Newark, Greenville or Astoria shall receive the equivalent of one hour's pay at the prevailing day rate, plus cost of transportation, and at Yonkers, Carteret, Chrome or Bayway shall receive the equivalent of two hours' pay at the prevailing day rate, plus cost of transportation.

9. Each of the members of the party of the first part shall at all times be the sole judge of the number of clerical employees needed for the conduct of the work and shall assign their positions and duties in their own discretion, provided that this does not conflict with the spirit of Clause 7 (above).

10. (*The text of this Clause, relating to disputes or controversies, is identical with that of Clause 18 (page 155) of the "General Cargo" Agreement.*)

11. No Steamship Company and no official, District Council, or Local of the International Longshoremen's Association, shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opin-
ion regarding the meaning of any provisions of this agree-
[fol. 168] ment, which cannot be amicably adjusted between the parties, shall be determined only by an Arbitration Committee appointed in accordance with Clause 10 (above).

12. There shall be no beer or other intoxicating liquors brought upon the property of the party of the first part. For a violation of this Clause the guilty party may be discharged and given no further employment by the party of the first part.

13. The party of the second part will not uphold incompetency, unauthorized stoppage of work, shirking of work, pilfering or broaching of cargo, or the unauthorized divulging to any person of payroll or other data pertaining to the business of a member of the party of the first part; the commission of any of the above offenses shall be sufficient cause for the dismissal of the guilty person and such action shall not be regarded as discrimination.

14. (*The text of this Clause, relating to discrimination, is identical with that of Clause 16 (page 154) of the "General Cargo" Agreement.*)

15. This agreement shall take effect as of January 1, 1940, and shall terminate on September 30, 1941. Either of the parties may give written notice on or before September 1, 1940, requesting reconsideration of the *wage rates only*; in the event such a request is made, either party may then submit proposals and the parties shall meet to discuss the matter; any agreement reached on a revision of such wage rates shall become effective October 1, 1940 and shall remain in effect up to and including September 30, 1941.

[fol. 169] V. Port Watchmen Agreement

Dated January 27, 1939; Modified and Extended January 29, 1940

This Agreement, made and entered into by and between the undersigned members of the New York Shipping Association and Contracting Watching Agencies, as party of the first part, and the International Longshoremen's Association and its affiliated Port Watchmen's Union Local 1456, as party of the second part, covers cargo watchmen employed by the party of the first part on piers in the Port of Greater New York and vicinity.

1. All cargo watchmen employed by the party of the first part, with the exception of crew watching on ships, where it has been the practice to use ships' personnel, Railroad Police and/or City Police, shall be members of the I. L. A. Local 1456, whenever such men are available. Whenever not available, the party of the first part shall have the right to employ any other men who can perform the work until such time as the party of the second part can furnish such men—but the party of the first part shall have the right

to employ such non-union men until the completion of the day on which they are employed.

2. The basic working day shall consist of three shifts of eight (8) hours each, from 8 A. M. to 4 P. M., 4 P. M. to 12 Midnight, and 12 Midnight to 8 A. M.—except that men may also be employed on an 8 A. M. to 5 P. M. shift and when working in this category through the noon meal hour shall be paid for that hour at the overtime rate. When [fol. 170] men are required for duty connected with the arrival or departure of ships, they may be ordered to report at any time within the 24 hours and shall receive a minimum of eight hours' pay from the time ordered to report, with the understanding that they may be assigned to perform any watchmen's work upon completion of such duty.

3. (a) The minimum wage scale shall be—

$5.25 for an 8 hour day for watchmen;
$5.75 for an 8 hour day for gatemen;
$6.25 for an 8 hour day for roundsmen;

subject to the exception specified in Clause 2 with respect to men on an 8 A. M. to 5 P. M. shift.

(b) If a man has worked more than eight consecutive hours in any twenty-four hours, he shall be paid for the excess number of hours worked at the overtime rate of one and one-half times the proportionate hourly rate, subject to the exception specified in Clause 2 with respect to men on an 8 A. M. to 5 P. M. shift; if brought back to work for a second shift of eight hours in any twenty-four hours, he shall be paid for such second shift at the overtime rate.

(c) If a man has worked for the same employer more than five days in any one week, he shall be paid for the first-half of the sixth day at the straight time proportionate hourly rate and for the second-half of that day at the overtime rate of one and one-half times the proportionate hourly rate, subject to the exception specified in Clause 2 with respect to men on an 8 A. M. to 5 P. M. shift.

[fol. 171] 4. If ordered out for work, the men shall receive a full day's pay except that when work is prevented by weather conditions they shall receive one-quarter of a day's pay.

5. Every effort will be made to arrange for the men to receive their wages in cash at a place and at a time as convenient as possible to the men weekly.

6. All uniforms and equipment, if required by the party of the first part, shall be paid for and furnished by the party of the first part, and shall remain the property of the party of the first part.

7. (*The text of this Clause, relating to traveling time, is identical with that of Clause 17 (page 154) of the "General Cargo" Agreement.*)

8. All assignments to work for the following day shall be given to watchmen, whenever practicable, before leaving their posts. Watchmen shall be allowed to shape at the piers and offices until 10 A. M.

9. It shall be the duty of watchmen to watch on piers all properties, cargo and movements of cargo to and from ships, lighters and trucks, and similarly in ship's holds where that has heretofore been the regular practice.

10. The party of the first part shall at all times be the sole judge of the number of men to be employed and the duties to which they are to be assigned and shall have the right to select the men they desire.

[fol. 172] 11. Any man who, prior to October 24, 1938, had been regularly employed on a six-day-week basis, shall (if still in the employ of the same employer) be continued on that basis, or be restored to that basis, as the case may be.

12. In the event of a strike of other pier employees who are members of other affiliated Locals of the International Longshoremen's Association, the party of the second part agrees that the watchmen, gatemen and roundsmen referred to herein will nevertheless continue at their posts and will protect the property and cargo of the party of the first part, unless strikebreakers are employed on work covered by other agreements between the party of the first part and the party of the second part.

13. (*The text of this Clause, relating to disputes or controversies, is identical with that of Clause 18 (page 155) of the "General Cargo" Agreement.*)

14. No Steamship Company or Contracting Watching Agency and no official, District Council, or Local of the International Longshoremen's Association, shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties, shall be determined only by an Arbitration Committee appointed in accordance with Clause 13.

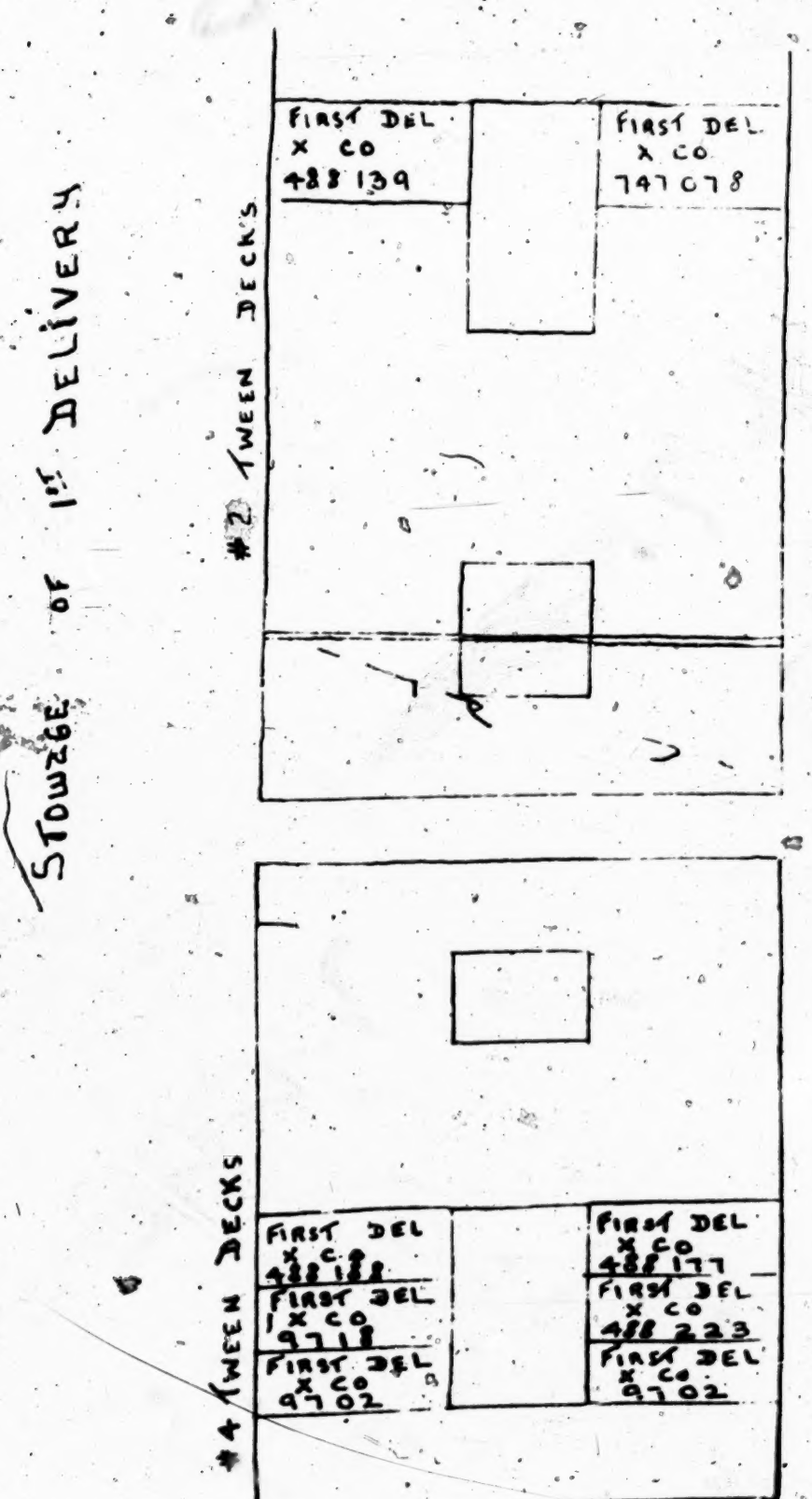
[fol. 173] 15. There shall be no beer or other intoxicating liquors, brought upon the property of the party of the first part. For a violation of this Clause the guilty person may be discharged and given no further employment by the party of the first part. It is clearly agreed that men shall not be allowed to leave the pier during working hours for the purpose of obtaining drink, or for any purpose whatsoever, except with the express permission of the supervisor in charge.

16. The party of the second part will not uphold incompetency, unauthorized stoppage of work, shirking of work, pilfering or broaching of cargo; the commission of any of the above offenses shall be sufficient cause for the dismissal of the guilty person and such action shall not be regarded as discrimination. If any man is convicted of theft, he shall be expelled as a member of the party of the second part.

17. (*The text of this Clause, relating to discrimination, is identical with that of Clause 16 (page 154) of the "General Cargo" Agreement.*)

18. This agreement shall take effect on January 1, 1940, and shall terminate on September 30, 1941. Either of the parties may give written notice on or before September 1, 1940, requesting reconsideration of the *wage rates only;* in the event such a request is made, either party may then submit proposals and the parties shall meet to discuss the matter; any agreement reached on a revision of such wage rates shall become effective October 1, 1940 and shall remain in effect up to and including September 30, 1941.

Taxpayer's Exhibit 12 in Evidence



- ON DECK -

- SYDNEY -
2 DRS 10 TNLS LACQUER
1 CYL CYCLOPROPANE
65 DBLS FORMALDEHYDE

- MELBOURNE -
110 DBLS FORMALDEHYDE
10 CYL LACQUER
1995 FRIED COTTON
45 DRS CHRONIC 1 CYL INK
44 CARBOYS FORMIC ACID

- L W -

ADELAIDE DRS OIL
MELBOURNE DRS OIL PAINTS
BRISBANE DRS OIL PAINTS

- SYDNEY -
500 DRS CYANIDE

- MELBOURNE -
500 DRS CYANIDE

DRS LUB OIL
- BRISBANE -

- ADELAIDE -
- ST LOUIS -
- MELBOURNE -
CARGO

AUTO
BRISBANE
PARIS

ADELAIDE
MELBOURNE
SYDNEY
BRISBANE

MAC'S CHEM BRISBANE AUS

F. DEL CO 9702
F. DEL CO 9713
F. DEL CO 48115

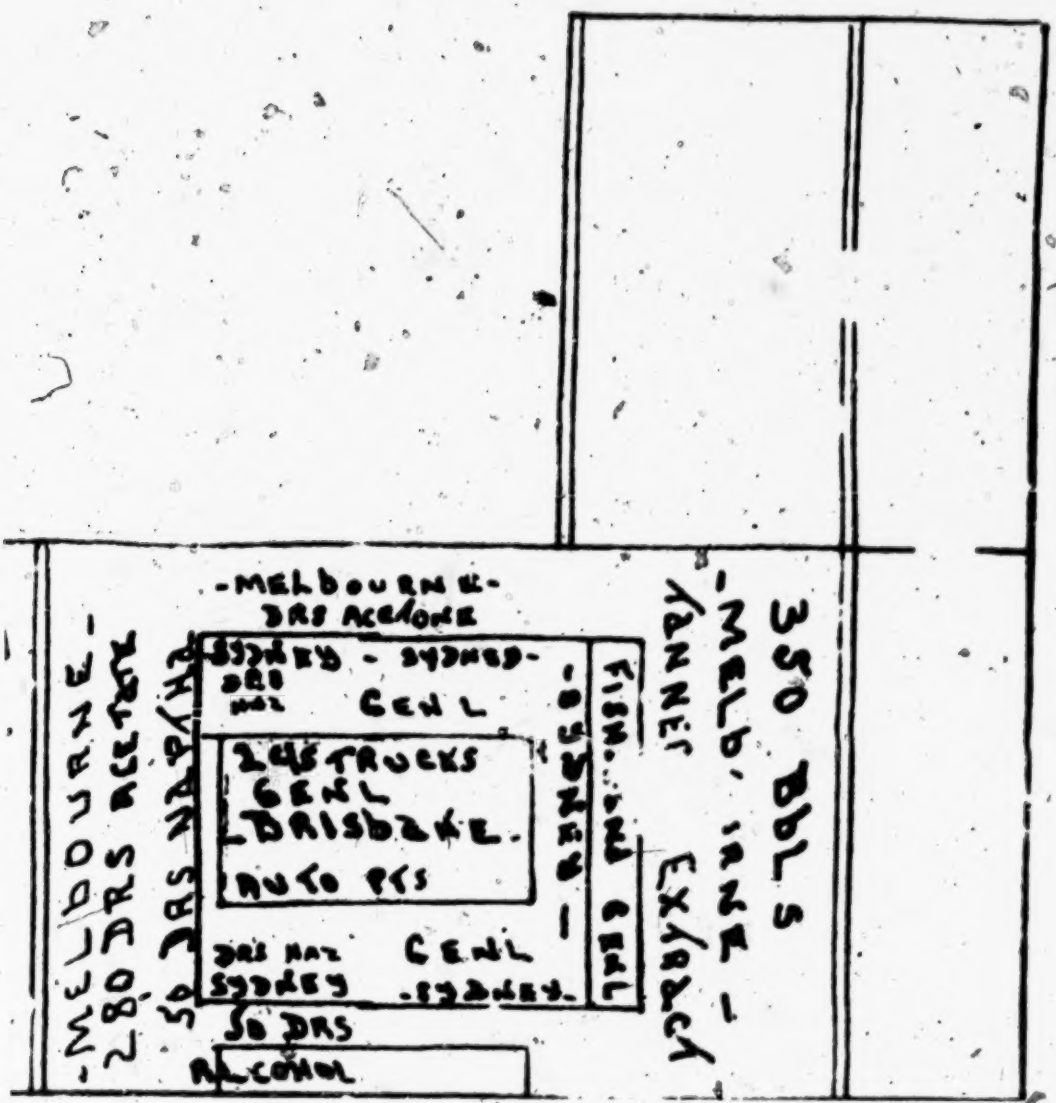
60 DBLS TAN EXTRACT
16 CYLS CHASSIS
ADELAIDE -
995 GLASS SHRUTOTS
1 CYL AUTO
90 TAN
CAN GLASGOW EXTRACT

DRS LUB OIL
- BRISBANE -
DRS LUB OIL

- MELBOURNE -
CHEM CORP
SYDNEY - DRS LUB OIL

COAL
ENGINE
ROOM.
COAL
COAL
COAL
COAL
COAL
ROOM
ROOM
615 FORDS
FISH-BEND AUTO PTS
SYDNEY - GENL CARGO
12615 TRUCKS 615 PTS
MELBOURNE PTS (ON)
AUTO PTS
FISH-BEND
615 FORDS
FUEL XCO 48124
GENL BRISBANE AUTOPTS
FUEL XCO 74702
BRISBANE - AUTO PTS GENL CARGO

ALBANE
SYDNEY
Fish Bend
MELBOURNE
ADELAIDE



[fol. 175] AFFIDAVIT OF NO OPINION

STATE OF NEW YORK,
County of New York, ss.:

Samuel M. Lane, being duly sworn, deposes and says:

That he is a member of the firm of Baldwin, Todd & Lefferts, attorneys for the petitioner herein, and is familiar with all the proceedings had herein and that no opinion was rendered by the court below in this proceeding.

Samuel M. Lane.

Sworn to before me this 10th day of August, 1944.
Charles E. G. Lloyd, Notary Public.

[fol. 176] STIPULATION WAIVING CERTIFICATION

It Is Hereby Stipulated that the papers as hereinbefore printed consist of true and correct copies of the order transferring this proceeding to the Appellate Division, First Judicial Department, the notice of application under Article 78 of the Civil Practice Act, petition, answer and return, and all other papers now on file in the office of the Clerk of the County of New York upon which the court below acted in transferring this proceeding to the Appellate Division for determination, except for the petitioner's undertaking for the payment of costs and petitioner's cancelled checks accompanying applications for refund, which are omitted herefrom and which may be handed up to the Court on the argument by either party hereto.

Certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated, August 10, 1944.

Baldwin, Todd & Lefferts, Attorneys for Petitioner;
Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents.

[fol. 177] In Supreme Court of New York, New York County

In the Matter of the Application of John T. Clark & Son, Petitioner,

for an order against

Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Notice of Appeal to the Court of Appeals

Sirs:

Please Take Notice that the respondents hereby appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945 and entered in the office of the Clerk of said Appellate Division on or about the 28th day of March, 1945 annulling the determination of the respondent Joseph D. McGoldrick, Comptroller of the City of New York upon the law with $50 costs and disbursements and directing the respondents to refund the amount of the taxes paid by the petitioner herein and the respondents appeal from each and every part of said Appellate Division order [fol. 178] as well as from the whole thereof.

Dated, May 1st, 1945.

Yours, etc., Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents, Office & P. O. Address, Municipal Building, Borough of Manhattan, New York City.

To: Baldwin, Todd & Lefferts, Esqs., Attorneys for Petitioner, 120 Broadway, Borough of Manhattan, New York.

Archibald R. Watson, Esq., Clerk of New York County.

[fol. 179] In Supreme Court of New York, Appellate Division, First Department

Present: Hon. Francis Martin, Presiding Justice, Hon. Alfred H. Townley, Hon. Edward J. Glennon, Hon. Irwin Untermyer, Hon. Edward S. Dore, Justices.

15159 Order

In the Matter of the Application of John T. Clark & Son, Petitioner,

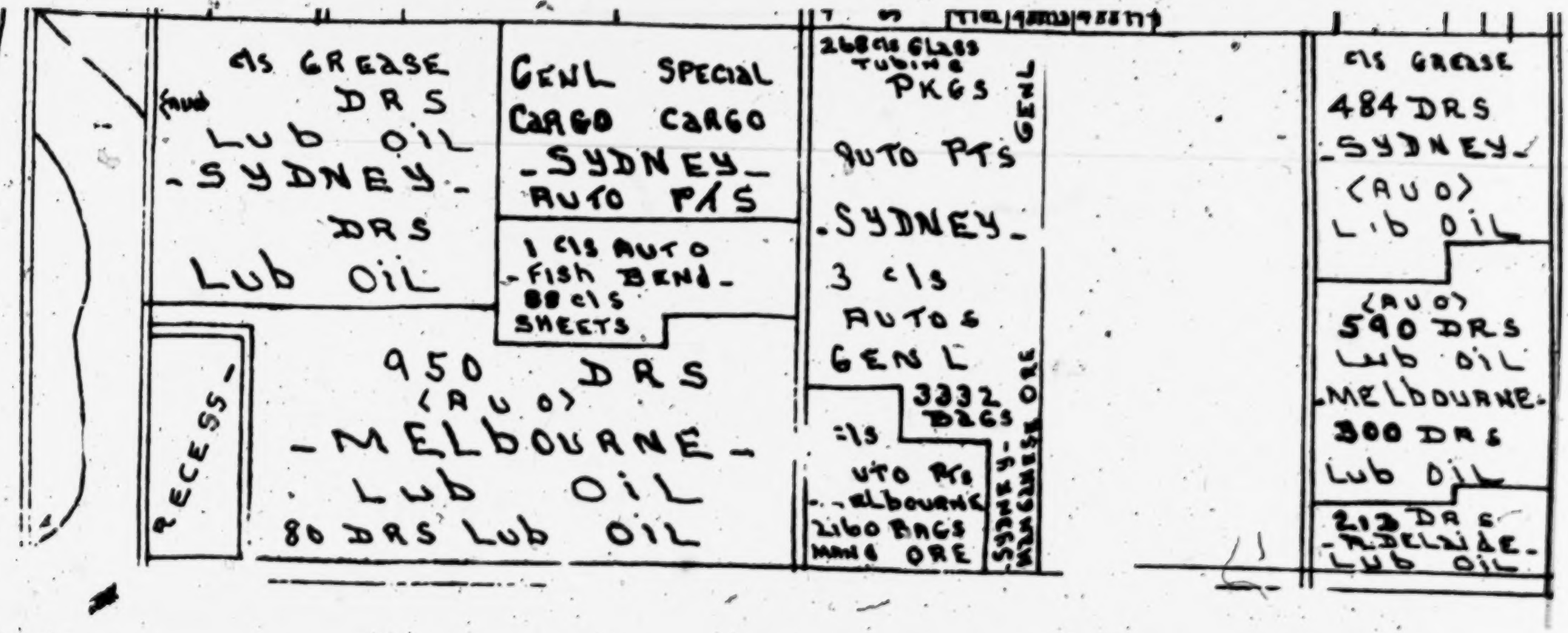
for an order against

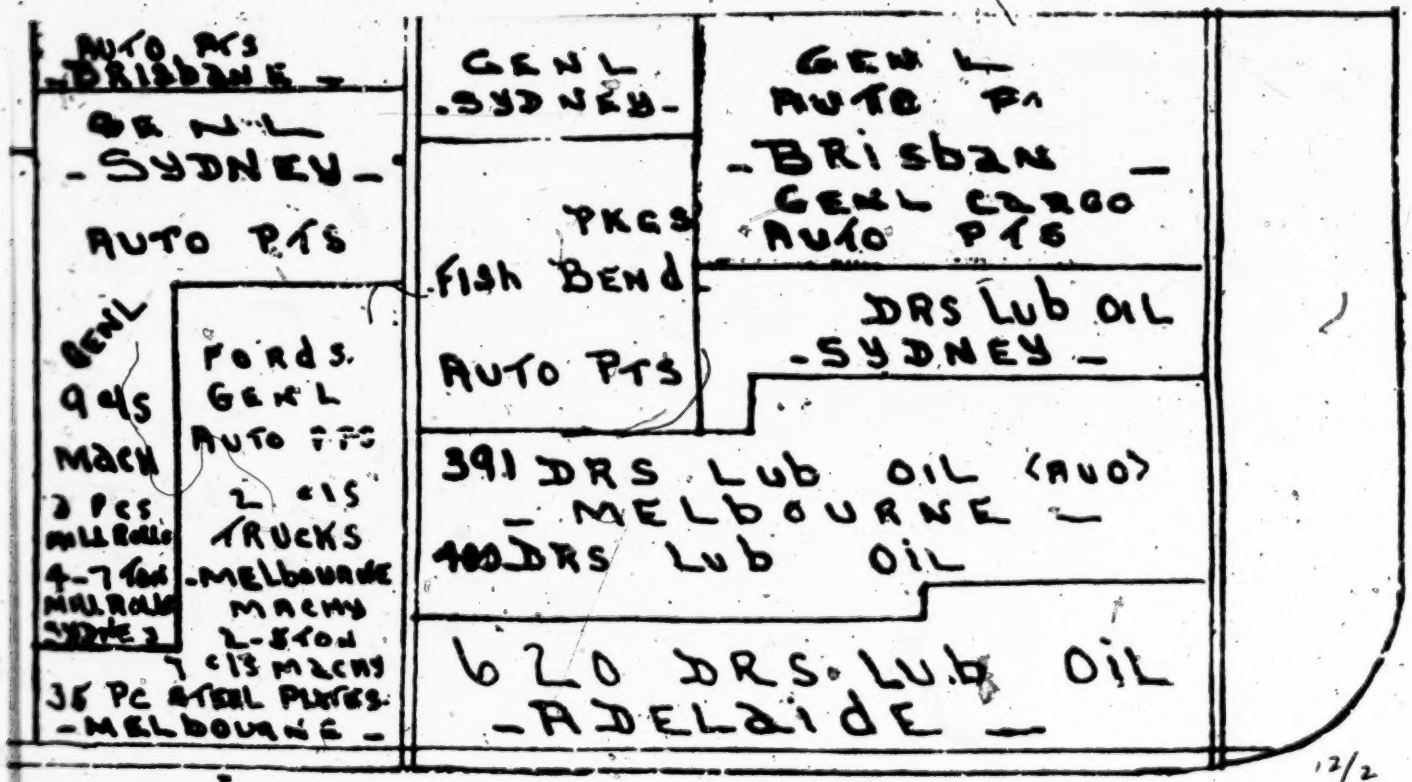
Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Order—March 16, 1945

The above-named petitioner having moved at Special Term, Part I, of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Act, for an order transferring the record of this proceeding to this Court for a review of a final determination of respondent, Joseph D. McGoldrick, denying the application made by the peti- [fol. 180] tioner for refund of taxes in the total amount of $4,942.37, with interest thereon, assessed by the City of New York against petitioner for the years 1938, 1939, 1940 and 1941, pursuant to Local Law No. 20 of 1938, Local Law No. 103 of 1939, Local Law No. 78 of 1940, and Local Law No. 47 of 1941, which taxes were paid by petitioner to the City of New York under protest; and said motion having been granted by order dated May 3, 1944, transferring all proceedings and papers herein to this Court for review and determination; and the application to review said determination having been argued in this Court by Samuel M. Lane, Esq., of counsel for the petitioner, and by Samuel J. Warms, Esq., of counsel for the respondents; and due deliberation having been had thereon, it is unanimously

Ordered that the said determination of respondent, Joseph D. McGoldrick, be and the same hereby is in all respects annulled, upon the law, with $50 costs and disbursements to the petitioner; and it is further unanimously


CIS GREASE
DRS
Lub OIL
-SYDNEY-
DRS
Lub OIL
GENL SPECIAL
CARGO CARGO
-SYDNEY-
AUTO PTS
1 CIS AUTO
-FISH BEND-
88 CIS
SHEETS
950 DRS
(AUO)
-MELBOURNE-
Lub OIL
80 DRS Lub OIL
RECESS-
268 CIS GLASS
TUBING
PKGS
AUTO PTS
-SYDNEY-
3 CIS
AUTOS
GENL
3332
BAGS
CIS
UTO PTS
-ELBOURNE
2160 BAGS
MANG ORE
GENL
SYDNEY-
MANGANESE ORE
CIS GREASE
484 DRS
-SYDNEY-
(AUO)
Lub OIL
(AUO)
590 DRS
Lub OIL
-MELBOURNE-
300 DRS
Lub OIL
213 DRS
-ADELAIDE-
Lub OIL


AUTO PTS
-BRISBANE-
GENL
-SYDNEY-
AUTO PTS
GENL
945
MACH
2 PCS
MILLROLL
4-7 ton
MILLROLL
SYDNEY
FORDS
GENL
AUTO PTS
2 CTS
TRUCKS
-MELBOURNE
MACHS
2-5TON
7 CTS MACHS
35 PC STEEL PLATES
-MELBOURNE-
GENL
-SYDNEY-
PKGS
FISH BEND
AUTO PTS
GENL
AUTO PTS
-BRISBANE-
GENL CARGO
AUTO PTS
DRS LUB OIL
-SYDNEY-
391 DRS LUB OIL (AUS)
-MELBOURNE-
400 DRS LUB OIL
620 DRS. LUB OIL
-ADELAIDE-

12/2

174a

Ordered that the respondents, or either of them, upon due service of a certified copy of this order, forthwith refund to petitioner the amounts so paid, viz.: $3,595.78, paid on the 16th day of June, 1941, and $1,346.59, paid on the 12th day of June, 1942, with legal interest thereon to the date of such refund.

[fol. 181] In Supreme Court of New York, Appellate Division, First Department

Memorandum Opinion

(Reported in 113 New York Law Journal 1025, March 17th, 1945)

15159. Matter of John T. Clark & Son, pet. (McGoldrick, res.)—Determination of the Comptroller of the City of New York unanimously annulled, with $50 costs and disbursements to the petitioner, and the respondents directed to refund petitioner's deposit, with interest, on the authority of Puget Sound Stevedoring Co. v. Tax Commission (302 U. S., 90). Settle order on notice.

Waiver of Certification

It is hereby stipulated that the foregoing are correct copies of the notice of appeal to the Court of Appeals, the order of the Appellate Division, the memorandum opinion of the Appellate Division and all the papers upon which said order and memorandum opinion of the Appellate Division are founded, all of which are now on file in the office of the Clerk of the County of New York; and certification thereof pursuant to Section 170 of the Civil Practice Act or otherwise is hereby waived.

Dated, New York, May 8th, 1945.

Ignatius M. Wilkinson, Corporation Counsel, Attorney for Defendant-Appellant. Baldwin, Todd & Lefferts, Attorneys for Petitioner-Respondent.

[fol. 182] IN COURT OF APPEALS OF NEW YORK

Witness, The Hon. John T. Loughran, Senior Associate Judge, Presiding. John Ludden, Clerk.

In the Matter of the Application of JOHN T. CLARK & SON, for an Order ag'st Joseph D. McGoldrick, Comptroller of the City of New York, & ano.

REMITTITUR—July 19, 1945

Be It Remembered, That on the 11th day of May in the year of our Lord one thousand nine hundred and forty-five, Joseph D. McGoldrick, Comptroller, &c., and another, the appellants in this cause, came here unto the Court of Appeals, by Ignatius M. Wilkinson, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And John T. Clark & Son, the respondent in said cause, afterwards appeared in said Court of Appeals by Baldwin, Todd & Lefferts, its attorneys.

[fol. 183] Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Edmund B. Hennefeld, of counsel for the appellants, and by Mr. Samuel M. Lane, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs. A question under the Constitution of the United States was presented and necessarily passed upon. The appellant contended that Local Laws No. 20 of 1938, No. 103 of 1939, No. 78 of 1940, and No. 47 of 1941, adopted by the City of New York pursuant to Chapter 873 of the Laws of 1934 of the State of New York, as amended, are not contrary to, or in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States as applied to the taxing of receipts of the respondent from stevedoring operations. This court held to the contrary.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the

said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed with costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court [fol. 184] of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

(Signed) John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 19, 1945.

I Hereby Certify, that the proceeding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(Signed) John Ludden, Clerk. (Seal of the Court of Appeals.)

[fol. 185] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK, SPECIAL TERM, PART II

Present Hon. David W. Peck, Justice

In the Matter of The Application of JOHN T. CLARK & SON, Petitioner, for an Order against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

ORDER ON REMITTITUR—August 10, 1945

The above-named respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, having appealed to the Court of Appeals of the State of New York from each and every part of the Order of the Appellate Division of the Supreme Court, First Department, dated

the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 28th day of March, 1945, which Order annuls the determination of respondent, Joseph D. McGoldrick, with $50 costs and disbursements to the petitioner, and orders the respondents, or either of them, to refund to petitioner the sum of $3,595.78, paid by petitioner on the 16th day of June, 1941, [fol. 186] and the sum of $1,346.59, paid by petitioner on the 12th day of June, 1942, with legal interest thereon to the date of refund, and the said appeal having been duly argued in the Court of Appeals and the said Court of Appeals having ordered and adjudged, on the 19th day of July, 1945, that said Order of the Appellate Division of the Supreme Court, First Department, be affirmed with costs, and a certified copy of the Order of said Court of Appeals having been duly filed in the office of the Clerk of the County of New York,

Now, on motion of Baldwin, Todd & Lefferts, attorneys for the petitioner, it is

Ordered, Adjudged and Decreed that the said Order of the Court of Appeals be, and it hereby is, made the Order of this Court, and the Clerk is hereby directed to enter judgment accordingly.

Enter.

D. W. P., J. S. C.

[fol. 187] In Supreme Court of New York, County of New York

[Title omitted]

Affidavit of Regularity

State of New York,
County of New York, ss:

Samuel M. Lane, being duly sworn, deposes and says:

That deponent is a member of the firm of Baldwin, Todd & Lefferts, attorneys for the petitioner, and is familiar with the proceedings.

That the above named respondents appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, First Depart-

ment, dated the 16th day of March, 1945, annulling the determination of respondent McGoldrick.

That the Court of Appeals affirmed the order of the Appellate Division of the Supreme Court, First Department. A certified copy of said order of affirmance is filed herewith.

That petitioner desires that the order of the Court of Appeals be made the order of this Court and that the Clerk be directed to enter judgment accordingly.

[fol. 188] That no other or previous application for the relief sought herein has been made to any Court or Judge.

Wherefore, deponent prays that said order of the Court of Appeals, affirming the order of the Appellate Division of the Supreme Court, First Department, be made the order of this Court, and that the Clerk be directed to enter judgment accordingly.

Samuel M. Lane.

Sworn to before me, this 9th day of August, 1945.
Norman Hall Deyo. Notary Public. (Seal.)

[fol. 189] In Supreme Court of New York, County of New York

In the Matter of the Application of John T. Clark & Son, Petitioner,

for an order against

Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents.

Judgment on Remittitur—August 24, 1945

The above named respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, having appealed to the Court of Appeals of the State of New York from each and every part of an Order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 28th day of March, 1945, and the Court of Appeals having, on the 19th day of July, 1945, ordered and adjudged that said

Order of said Appellate Division be affirmed with costs, and an Order having been duly entered thereon on the 11th day of August, 1945, making said Order of the Court of Appeals the order of this Court, and the remittitur of the Court of Appeals having been duly filed in the office of the Clerk of the County of New York, and said costs awarded by the Court of Appeals having been duly taxed by the Clerk of this Court on the 17th day of August, 1945, in the sum of $139.26, it is, on motion of Baldwin, Todd & Lefferts, attorneys for the petitioner,

[fol. 190] Adjudged that the Order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 28th day of March, 1945, be, and the same hereby is, in all respects affirmed, and it is further

Adjudged that the petitioner, John T. Clark & Son, whose address is 17 State Street, New York, New York, recover of the respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, each of whose address is Municipal Building of the City of New York, Borough of Manhattan, City of New York, State of New York, the sum of $139.26 costs as taxed, and that said petitioner have execution therefor.

Dated: New York, New York, August 24, 1945.

Archibald R. Watson, Clerk.

[fol. 191] In Supreme Court of New York, New York County

[Title omitted]

Affidavit of No Opinion

State of New York,
County of New York, ss:

John F. Kelly, being duly sworn, says:

That he is the Assistant Chief Clerk in the office of the Corporation Counsel of the City of New York, the attorney for the respondents-appellants in the above cause.

Deponent says that no opinion was written or handed down by the Court of Appeals in deciding the appeal in this cause.

John E. Kelly.

Sworn to before me this 28th day of September, 1945.
Harry Stockfeder, Notary Public, Kings County, N. Y. (Seal.)

[fol. 192] [Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 193] IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 19, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

[Endorsed on Cover:] File No. 50,222 New York, Supreme Court, Term No. 519: Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Petitioners, vs. John T. Clark & Son. Petition for writ of certiorari and exhibit thereto. Filed October 17, 1945. Term No. 519 O. T. 1945.